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FISH STOCKS AND HIGHLY MIGRATORY
FISH STOCKS
New York, 14-31 March 1994

ELEMENTS OF A DRAFT INSTRUMENT ON CONSERVATION AND MANAGEMENT OF STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS COMPATIBLE WITH SUSTAINABLE DEVELOPMENT

Submitted by the delegation of Sweden

PREAMBULAR ELEMENTS

1. In determining and interpreting the provisions in the following, it is understood that the legal basis for the conservation and management of straddling fish stocks and highly migratory fish stocks is to be found in the 1982 United Nations Convention on the Law of the Sea.

2. The newly adopted Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas is a valuable instrument within its scope. States should favourably consider acceptance of this instrument, and its provisions are to be seen as a firm basis for further deliberations in other forums, as well as a basis for the provisions in the following.

3. The International Code of Conduct on Responsible Fishing, to be finalized by the Food and Agriculture Organization of the United Nations (FAO) by 1995, will give a generally applicable set of guidelines, equally well suited for the purpose of determining and interpreting the provisions in the following.

4. The convening of a Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks was proposed by the United Nations Conference on Environment and Development (UNCED), as may be seen in Agenda 21, chapter 17. Some basic prerequisites for the Conference are laid down in that chapter. These prerequisites are mandatory guidelines for determining and interpreting the provisions in the following.

5. The United Nations Commission on Sustainable Development is the organ entrusted with the task of following up the implementation of the results of UNCED. It is therefore the proper forum to follow up the Agenda 21 provisions on marine living resources. It is also the proper forum for following up the provisions adopted by this Conference.

6. General Assembly resolutions 47/192 of 22 December 1992 and 48/194 of 21 December 1993 form the formal mandate for determining and interpreting the provisions in the following.

7. Straddling fish stocks and highly migratory fish stocks are threatened. Although marine living resources, both in the exclusive economic zones and in the high seas, are renewable resources, which when managed well could sustainably provide resources, lack of proper management or management measures and over-investment in fishing fleets are a common recent development. Over-investment in marine fisheries has been estimated by FAO to be on the order of US$ 30 billion. In many cases straddling fish stocks and highly migratory fish stocks are heavily over-exploited and threatened by severe depletion. Such economic and biological damage may take years and even decades to repair.

I. GENERAL PRINCIPLES ON CONSERVATION AND MANAGEMENT OF STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS COMPATIBLE WITH SUSTAINABLE DEVELOPMENT

I.1. The freedom of the high seas

It has been a long-established custom to refer to the freedom of the high seas, a freedom which is open to all States and which encompasses freedom of fishing. It would, however, be incorrect to maintain that freedom of the high seas is a complete freedom entailing no responsibility. Freedom of fishing shall be exercised with due regard to the interest of other States. The utilization of straddling fish stocks and highly migratory fish stocks can never be seen as the interest of a single State only.

States fishing on the high seas should cooperate with each other and with coastal States in the conservation and management of straddling fish stocks and highly migratory fish stocks. Utilization without resource management could in the end result in a situation where the rights of other States would be infringed, an effect which is not in accordance with the principle of freedom of the high seas.

I.2. Cooperation with respect to straddling fish stocks and highly migratory fish stocks

States should cooperate in good faith with one another in the various spheres of international relations in order to promote the general welfare of nations.

This general duty is further elaborated in the 1982 United Nations Convention on the Law of the Sea.

Conservation and management of straddling fish stocks and highly migratory fish stocks compatible with sustainable development require cooperation among coastal States and States fishing on the high seas. Such cooperation should be undertaken within the framework of regional organizations or arrangements and be based on ecological principles.

I.3. Conservation and management compatible with sustainable use

Conservation and management of straddling fish stocks and highly migratory fish stocks should be compatible with sustainable use and to that end promote the maintenance of the quantity, quality, diversity and availability of fisheries resources for present and future generations.

I.4. Precautionary approach

The precautionary approach should be applied to the management of straddling fish stocks and highly migratory fish stocks. Conservation and management measures should be adopted, aimed at reducing the risk of damage to the living marine resources and the environment, taking account of scientific and technical uncertainty as well as the best scientific evidence available.

II. REGIONAL COOPERATION FOR FISHERIES ON THE HIGH SEAS OF STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS

II.1. Membership in regional fisheries cooperation bodies

(Text from the United Nations Convention on the Law of the Sea, complemented as necessary by the negotiating text prepared by the Chairman (A/CONF.164/13, paras. 35-38), amended in accordance with the following three principles: (a) mandatory membership for States whose vessels fish on the high seas; (b) rules within the regional bodies allowing for the admission of new members to these bodies; especially directed towards developing countries; (c) such rules should be laid down at the global level, for instance by this Conference)

II.2. Conservation and management measures compatible with sustainable development

(The negotiating text proposed by the Chairman (A/CONF.164/13, para. 4), complemented as appropriate with elements from the FAO paper on the precautionary approach)

II.3. Compliance and control

(Text from the FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, complemented as appropriate with text from the negotiating text prepared by the Chairman (A/CONF.164/13, paras. 18 and 22-34, inter alia), on stricter compliance, control and enforcement measures when needed)

II.4. Dispute settlement

(Text from the United Nations Convention on the Law of the Sea)

III. COOPERATION TO ENSURE COMPATIBILITY AND COHERENCE BETWEEN CONSERVATION AND MANAGEMENT OF STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS IN THE HIGH SEAS AND FISHERIES IN THE EXCLUSIVE ECONOMIC ZONES

III.1. Need for cooperation

Regional cooperation, inter alia, in the North-West Atlantic Ocean, the Indian Ocean and the Bering Sea has highlighted the necessity of dealing with the whole straddling fish stocks and highly migratory fish stocks in order to be successful in combating over-exploitation. Such cooperation must not await the near depletion of stocks. Conservation and management of straddling fish stocks and highly migratory fish stocks must be based on scientific evidence resulting from research and assessment of the whole stocks.

III.2. Forms of cooperation

Fisheries of coastal States of straddling fish stocks and highly migratory fish stocks in the exclusive economic zones will have to be compatible and coherent with the conservation and management measures on fisheries of straddling fish stocks and highly migratory fish stocks adopted by regional organizations or arrangements. This may be achieved in different ways, including:

(a) Incorporation of fisheries of straddling fish stocks and highly migratory fish stocks into regional management regimes for fisheries of straddling fish stocks and highly migratory fish stocks;

(b) Separate agreements between coastal States and relevant regional organizations for fisheries of straddling fish stocks and highly migratory fish stocks on the high seas, or unilateral declarations by coastal States, on compatibility and coherence of fishing in the exclusive economic zones with conservation and management measures agreed upon in the relevant regional organization or arrangements.

The first option is applied in major regional organizations such as the draft Convention on the Conservation and Management of Pollock Resources in the Central Bering Sea. This option should be given priority.

If option (b) is applied the agreements or declarations should ensure compatibility and coherence with the conservation and management measures adopted by regional organizations or arrangements for fisheries in the high seas. As concerns the issue of compliance and control, fisheries of coastal States of straddling fish stocks and highly migratory fish stocks in their exclusive economic zones, and action taken to implement management measures compatible and coherent with those agreed upon within the regional organizations or arrangements, should be reported by coastal States on a yearly basis to the relevant regional organization or arrangement.

The establishment of measures by coastal States on fisheries of straddling fish stocks and highly migratory fish stocks in their exclusive economic zones shall be without prejudice to the sovereign rights of the coastal States for the purpose of exploring, exploiting, managing and conserving living marine resources with areas under national jurisdiction, exercised in accordance with the United Nations Convention on the Law of the Sea.

IV. SPECIAL REQUIREMENTS OF DEVELOPING COUNTRIES

(Text from the negotiating text proposed by the Chairman (A/CONF.164/13, paras. 52-57))

V. REVIEW OF THE IMPLEMENTATION OF THE INSTRUMENT

Conferences of ministers of fisheries within the framework of FAO and with the participation of all regional organizations and arrangements shall be convened every fourth year to prepare the regular reviews by the Commission on Sustainable Development of chapter 17 of Agenda 21 and in that context to review the implementation of the instrument. The outcome of the reviews by the Commission on Sustainable Development of the conservation and management of straddling fish stocks and highly migratory fish stocks, including reviews of the implementation of the instrument, will be presented to the General Assembly of the United Nations via the Economic and Social Council. It will also provide an input to the report which is submitted directly to the General Assembly law of the sea matters.

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CONSERVATION AND RATIONAL UTILIZATION OF STRADDLING AND HIGHLY MIGRATORY FISH SPECIES

(Submitted by the delegation of Ukraine)

1. The issue of rational utilization of living marine resources in exclusive economic zones and on the high seas, particularly of fish stocks which migrate both within and beyond the economic zones (straddling stocks), is an extremely topical one for Ukraine, since its fishing industry is currently based on exploitation of straddling stocks. A result of the considerable increase in recent decades in the intensity of fishing by coastal countries in their zones, and of the expansion of international distant-water fishing in and beyond the zones, has been that many of the major straddling stocks and highly migratory and associated species, which play an important role in the economies of a number of coastal countries, are currently under stress. In some cases, the situation is a result of the combined impact of fishing and long-term unfavourable changes in the environment. At the same time, a number of resources in the economic zones and on the high seas are underutilized. Thus straddling stocks and highly migratory fish stocks need careful intensive study, control and the development of conservation measures.

2. In this connection the issue of regulation, conservation and rational utilization of such stocks has in recent years become extremely important to many coastal countries that engage in fishing, and also to countries which engage primarily in distant-water fishing. Ukraine is at one and the same time a coastal State and a State which has for more than 40 years been engaging in distant-water fishing in the oceans and seas, and as a result has a very strong interest in the long-term and sustainable utilization of straddling and highly migratory targets of fishing activity both on the high seas and in the economic zones. With this in mind, Ukraine is particularly concerned at the absence of a reliable mechanism for regulating the fishing of straddling fish stocks and highly migratory fish stocks on the high seas and in the economic zones, and

supports the effort to devise a procedure which would harmoniously combine the interests of coastal States, distant-water fishing States and developing States. Such a procedure must ensure equitable participation of all concerned States in management of living resources on the high seas.

3. The 1992 United Nations Convention on the Law of the Sea formulated the basic principles by which all States must be guided in the rational utilization of living marine resources not only in the exclusive economic zones, but also on the high seas. Ukraine fully supports the need for a sufficiently clear delimitation of the fisheries competence of States in the various areas of the oceans and seas, and considers that the basic aim of the Conference is to draw up specific mechanisms for regulating fisheries and measures for the conservation and rational utilization of straddling fish stocks and highly migratory fish stocks on the basis of international cooperation.

4. Ukraine's position regarding the utilization by the international community of the world's resources on the high seas and in the economic zones, including straddling stocks and highly migratory fish stocks on the high seas, is based on the position stated in the preamble to the United Nations Convention on the Law of the Sea regarding the desirability of establishing through the Convention, with due regard for the sovereignty of all States, a legal order for the seas and oceans which will promote the equitable and efficient utilization of their resources and the study, protection and preservation of the marine environment, thus contributing to the realization of a just and equitable international economic order which takes into account the interests and needs of mankind as a whole.

5. Ukraine's position regarding fishing for straddling fish stocks and highly migratory fish stocks on the high seas and in the economic zones is that the exploitation of these stocks must be conducted in accordance with conservation and rational utilization measures drawn up on a scientific basis by means of bilateral or multilateral cooperation through regional or subregional international fisheries management organizations. The conservation and rational utilization measures drawn up as a result of international cooperation must be based on the principles and criteria of a scaled-down fisheries regime which assumes a lower level of removal than the maximum sustainable yield provided for in the United Nations Convention with respect to the exploitation of the living resources of the sea.

6. On the basis of the above remarks, and also of articles 55, 56, 62, paragraph 2, 63 and 64 of the Convention, Ukraine does not support the effort of some coastal States to give their own exclusive economic zone the legal status of a territorial sea, or the intention to regulate fishing in adjacent areas of the high seas on the basis of national legislation inconsistent with the provisions of the 1982 Convention on the Law of the Sea.

7. Regulation of fishing, rational utilization and conservation of straddling fish stocks and highly migratory fish stocks in the oceans and seas, including on the high seas, must be carried out on an inter-state basis in a spirit of cooperation and good will and must be based on the following principles:

(a) Consensus in drawing up conservation measures: the most effective approach to resource conservation is the establishment of regional international fisheries organizations working on a consensus basis;

(b) Scientific basis for decisions: responsibility of coastal countries for organizing the monitoring of straddling and highly migratory fish stocks in their zones; voluntary monitoring of resources by all countries engaging in fishing on the high seas;

(c) An appropriate combination of rights and obligations: participation, on a non-discriminatory basis, of all States interested in the stocks in question in the work of the subregional and regional fisheries management organizations and mechanisms;

(d) Coastal States have preferential rights with respect to the conservation of straddling and highly migratory fish stocks in their exclusive economic zones, and shall assume responsibility for establishing a mechanism to regulate straddling and highly migratory fish stocks in the adjacent areas of the high seas;

(e) The habitats of straddling and highly migratory species, which occupy extensive areas of ocean space and, as a rule, extend over the economic zones of a number of countries, as well as a considerable part of the high seas, may not be assigned any special status which would not be in conformity with the Convention.

8. To secure successful implementation of the principles of international regulation of fishing set forth in the Convention and conservation of straddling and associated species, interested countries exploiting the stocks shall take all necessary measures to establish international fisheries organizations to manage the stocks of each specific species.

9. The main sphere of activity of international fisheries organizations should be to determine the regime for rational utilization of fish stocks, and also to agree on and adopt the necessary measures for the conservation of exploited stocks and accompanying (associated and dependent) species in accordance with article 119 of the Convention, taking into account the specific characteristics of the region or subregion. In this connection, States engaging in fishing in the region concerned shall carry out the following coordinated measures:

(a) Collection, storage and processing of fishing statistics and biological and oceanological information in accordance with the minimum data requirements for the conservation and management of straddling fish stocks and highly migratory fish stocks proposed in Annex I to the negotiating text prepared by the Chairman of the conferences (A/CONF.164/13* of 23 November 1993);

(b) Organization of assessment of stocks, determination and regulation of the magnitude of removal and/or of fishing effort;

(c) Institution of conservation measures, compatible and interrelated with the measures taken by States, to regulate the fishing industry within the areas

under their national jurisdiction in accordance with the United Nations Convention on the Law of the Sea; the measures introduced with respect to resources on the high seas must ensure comparable intensity of exploitation of a single stock both on the high seas and in waters within national jurisdiction;

(d) Holding of scientific congresses, dissemination of all scientific and fisheries information among participating States.

10. Flag States whose vessels engage in fishing on the high seas must voluntarily assume responsibility for implementing the conservation measures adopted by regional international organizations. The responsibility of flag States must be based on the following principles:

(a) States engaging in fishing for straddling and highly migratory species shall establish or join regional international organizations, or participate in their work as observers;

(b) Catch quotas shall be apportioned in the first instance among the participants in regional fisheries organizations, taking into account their traditions, and also the special needs of developing States; States which are not members of the organizations may apply for access to the unclaimed portion of quota;

(c) The national legislation of the flag State must provide for the following penalties for breach of the conservation measures:

- revocation of licence;
- revocation of the skipper's fishing permit;
- confiscation of fishing gear and the fish on board;
- confiscation of the vessel;

(d) Measures which could be adopted by international organizations with respect to flag States whose vessels violate the conservation measures:

- reduction of the catch quota for regulated straddling species and highly migratory targets of fishing;
- revocation of the quota for a period within which the flag State will have to take adequate steps to prevent violations;
- limitation, by port States which are members of regional international organizations, of cargo operations relating to transshipment of the violator State's fish;
- inclusion of violator States in an international organizations' "blacklist" with a view to limiting their fishing on the high seas;
- expulsion from membership of the regional organization;

(e) Control and responsibility measures:

- establishment of regional and national registers of fishing vessels to ensure that they are recorded and their current technical state is assessed, and provision of assistance to national and international regional organizations in collecting information on fishing activity.

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THE PRECAUTIONARY APPROACH IN FISHERY MANAGEMENT

Working paper submitted by the delegation of Ukraine
for the Working Group on the precautionary approach
in fisheries management

1. The essence of the precautionary approach in fisheries management should, in the view of the delegation of Ukraine, be that under given conditions restrictions on fisheries are applied which reduce catches to a level known to be below the possible catch determined at some time for the species in question or similar species on the basis of generally accepted, standard regulatory measures. The extreme instance of the precautionary approach is the introduction of a moratorium on fishing.

2. The present working paper discusses the sphere of application of the precautionary approach solely on the basis of biology, ecology and the state of the stocks of the species fished. The administrative, economic or political reasons for its possible application are not addressed.

3. The precautionary approach in fisheries management should be applied in the following cases:

(a) When there is a need to begin exploitation of a new species in the absence of sufficient scientific data to permit its exploitation on the basis of normal fishery regulation measures;

(b) To recommence exploitation of species to which a fishing moratorium has been applied;

(c) In intensifying fishing of species which are being fished insufficiently intensively and regarding which, as a rule, insufficient scientific data on the reaction of the species to the impact of fishing are available;

(d) If changes take place in an exploited population which were not predicted by the models used and which arise as a result of the joint impact of long-term natural cycles and fishing;

(e) When there is a need to replenish populations whose numbers have been depleted as a result of over-fishing based on the use of models inappropriate to the given situation, the use of erroneous models or the absence of regulation.

4. Application of the precautionary approach to the management of fishing for a given species should in our view be temporary in nature and should be accompanied by intensive fisheries research on the basis of which reliable information to permit a transition to a more intensive level of exploitation can be obtained.

5. If data on the size of the stock and of the possible catch are imprecise or lacking, experimental fishing is organized at a catch level known to be well below the possible catch determined at some time for the species in question or similar species on the basis of generally accepted, standard regulatory measures for that or similar species in other regions.

6. Once the necessary biological information has been obtained confirming the possibility of more extensive exploitation of living resources to which the precautionary approach had been applied, they should be fished on the basis of the scaled-down fisheries regime.

7. The scaled-down fisheries regime is based on utilization of criteria which would establish the size of the recommended catch at a level which protects the stock against possible over-fishing. One of the criteria of this kind which make it possible artificially to reduce the estimates obtained on the basis of the MSY concept and hence to arrive at the scaled-down fishing regime is the $F_{0.1}$ criterion (Gulland, Boerema, 1973). At present, in our view, bearing in mind the possibility of compiling information, its accessibility and its reliability, methods for the conservation and rational utilization of resources should be based on the MSY concept refined by means of the $F_{0.1}$ criterion.

8. One example of the use of the $F_{0.1}$ criterion to organize a scaled-down fishery regime in the Antarctic was its use to calculate the possible catch of a population of Antarctic silverfish (pleurogramma antarcticum). Comprehensive studies of silverfish biology carried out by YugNIRO in Prydz Bay from 1978 to 1989 demonstrated the species' high fisheries potential. The effective maximum sustainable yield per recruit (MSY/R) for a specified age at first capture was calculated on the basis of the Beverton-Holt analytical model. Taking a cautious approach to the exploitation of a new species in a region that had not been extensively studied, and given the important role of the silverfish in the food chain, an estimate of future fishing mortality obtained with the help of

the $F_{0.1}$ criterion was used to organize the fishery regime, and the optimum exploitation coefficient $U_{opt.}$ was determined by Baranov's equation.

9. As a result of its extremely low position in the food chain and, consequently, extremely high natural mortality, which is uncharacteristic of most Antarctic fish, the silverfish is a species for which determination of length and age for the start of optimum exploitation by the Kutty and Qasim equation (Kutty, Qasim, 1968) gives low figures, so that practically the entire silverfish stock in question is fishable. With this in mind, a figure corresponding to the number of fish older than the age at which 50 per cent of the fish become sexually mature was taken as the fishable stock. Thus the fishable stock and allowable harvest calculated on the basis of the optimum exploitation coefficient were even lower than the harvest determined solely on the basis of the $F_{0.1}$ criterion, and this is fully in line with the approaches to conservation specified in article 3, paragraph 2, of the 1991 Madrid Protocol on Environmental Protection signed by the Antarctic Treaty Consultative Parties.

10. In practice, no fishing for silverfish took place, but this approach to planning the exploitation of silverfish resources on the basis of a preliminary cycle of investigations is to our mind an example of a cautious approach to calculating the possible catch of fishery species in the Antarctic.

11. In the future, bearing in mind the growing intensification of international fisheries and their extension to new and previously unfished species, further improvement of the initial information determining the optimum exploitation regime for targeted species is unavoidable. Relevant studies will include in-depth investigation of the amplitude and periodicity of long-term variations in stocks caused by factors other than fishing (for example, anomalous environmental phenomena), and investigation of the biology of associated and accompanying species. This would entail a transition to investigation of marine biotic communities on the ecosystem level. Such investigations must be based on study and quantitative modelling of interactions of the combined population of fish and other aquatic organisms with the environment.

12. At present most marine research centres involved with the regulation of fisheries acknowledge that in the near future marine ecosystem modelling which pays particular attention to fish and other fishery species will be a powerful new means of regulating fisheries. Such modelling permits not only estimation of the size of the resources to be regulated and the distribution, but also study of the changes over time and space in the ecosystem's reaction to the desired and/or recommended level of fishing.

13. The transition to ecosystem modelling will make it possible to obtain better-founded figures for possible catch which take into account the interaction among the range of factors affecting an ecosystem's fisheries and non-fisheries components, and to exploit the living resources of the seas and oceans in accordance with their natural replenishment capacity.

14. At the same time, the use of ecosystem modelling is significantly limited by the high cost of developing such models, including organizing and maintaining the system for collection of input parameters and the system for processing

them. Obviously, in cases where living resources are exploited by a number of countries, cooperation between these countries will be needed in order to employ the ecosystem approach to the exploitation of living marine resources.

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APPLICABILITY OF THE CONCEPT OF MAXIMUM SUSTAINABLE YIELD

Working paper submitted by the delegation of Ukraine for the Working Group on the concept of maximum sustainable yield

1. In the present circumstances, when the harvesting of the living resources of the world's oceans in a number of regions has reached the maximum possible level, one of the main concepts of the theory of fishing - regulating the catch - has become vitally important for the organization of the further optimum exploitation and conservation of the living resources of the sea.

2. Article 61, paragraph 3, and article 119, paragraph 1 (a), of the United Nations Convention on the Law of the Sea, which define the approaches to the utilization and conservation of the living resources in exclusive economic zones and the high seas, specify the reference point of maximum sustainable yield (MSY) as the basis for fisheries regulation and management.

3. At the present time, MSY is the most widely used reference point in the world for fisheries regulation and management. The regulation of the catch in accordance with the concept of MSY is based on a single-species approach to modelling and fisheries management. On the purely theoretical level, the MSY concept reflects the view that it is essential, in order to conserve the effective productivity of fishery stocks, to exclude from the catch only that part which might be offset by the reproductive potential of the population and its capacity to increase the biomass.

4. According to existing definitions, maximum sustainable yield (MSY) is the average size of the largest yield which could be taken from a stock over a prolonged period of time under existing environmental conditions; a balanced yield, corresponding to the level of maximum productivity of a given population (stock); or the largest balanced yield which could in theory be obtained from a given population (stock).

5. In employing the term MSY, we have in mind the true (or absolute) maximum sustainable yield corresponding to the level of the fishing mortality rate F_{MSY} or the fishing effort f_{MSY} calculated on the basis of analytical or production models.

6. The main positive aspects of the use of the MSY concept in fisheries regulation are the following:

(a) The possibility of establishing quantitative limits;

(b) The relative accessibility of the basic data required for the calculations;

(c) Simplicity and illustrative value.

7. The attraction of using the MSY concept in fisheries regulation is that very high yields can be obtained through the maximum utilization of the productivity of the fishery population.

8. In the meantime, the use in fisheries regulation of the MSY concept in its "true" form, unadapted to the biology of the species and the environmental conditions, has revealed a number of adverse consequences of such regulation for the status of the resources exploited because of certain shortcomings inherent in the concept, which was devised on the basis of both production and analytical models.

9. The use of production models to devise a regime of regulation over a prolonged period of time has the following characteristics which reduce the reliability of the figures calculated for MSY, which, in turn, results in adverse consequences for the resources exploited:

(a) The proposed balance between the stock and the fishery, if not adjusted in the light of their current status, leads to forecasts which only roughly approximate conditions of equilibrium;

(b) The harvesting of the stock to the level of MSY with the consequent introduction of small annual categories into the fishing industry over a number of years leads to the depletion of the stock;

(c) The use of that type of model has been made more difficult by the need to standardize catch per unit effort or to standardize fishing effort developed by various types of fishing equipment (trawls, lines, purse seines, cast nets, traps, etc.).

10. The particular features of the use of analytical models which give rise to difficulties in the use of MSY and reduce the reliability of the figures calculated for it are as follows:

(a) The need for significant expenditure in order to obtain sufficiently reliable biological information characterizing the stock of the fishery;

(b) The need for the provisional adoption of certain preconditions to ensure the continuing recruitment of a stock within the limits of a wide range in the size of the stock, the parameters of growth, natural mortality and the stable status of a fishery;

(c) The need for adjustments in the level of MSY in the event that it is calculated in terms of a low level of recruitment over a number of years; in that event, fishing at an unadjusted level of MSY would result in overfishing;

(d) The complexity of using the MSY concept in respect of fish with a short life cycle, for which the curve of the possible yield has no maximum and the determination of F_{MAX} is difficult; in that event, fishing at the level of an inaccurately determined F_{MAX} may lead to a serious depletion of the stock, reduced recruitment and lower catch per unit effort;

(e) The difficulty in applying the MSY concept in respect of fish with a long life cycle in the event that fishing is directed towards young fish of the recruitment group.

11. Thus, the use of MSY in its "true" form as a basis for fisheries regulation is more acceptable for species with a relatively long life cycle, in which case fishing should focus mainly on the balance of the stock and the size of the recruitment should not undergo significant fluctuations from year to year.

12. The use of the VPA and SPA methods and cohort analysis, although allowing a more reliable calculation of the annual change in MSY on the basis of fluctuations in recruitment, does not, however, on the whole, lead to improved results in the application of a system of regulation based on the concept of MSY.

13. At the same time, articles 61 and 119 of the United Nations Convention on the Law of the Sea state that the maximum sustainable yield is "qualified by relevant environmental and economic factors, including the economic needs of coastal fishing communities and the special requirements of developing States, and taking into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standards, whether subregional, regional or global". The United Nations Convention thus provides for the use of the MSY reference point for fisheries regulation not in its direct sense, but in a more flexible, weaker sense.

14. In view of the need to establish reference points for fisheries regulation in keeping with the standards and recommendations set out in that international legal instrument, which is of particular importance at the present time when stocks of many species of fish are being reduced, it would be advisable to refrain from regulating fisheries in the economic zones and the high seas on the basis of the concept of MSY in its "true" form. The use of the MSY reference point, modified in various ways in line with the aims of stock conservation and fisheries regulation, should be introduced into the general practice of international fisheries regulation, including the regulation of that part of the straddling fish stocks which extends beyond the economic zones.

15. There are various possible modifications which would, on a sound basis, establish the recommended yield at a level lower than MSY. That would to some degree protect the stock from possible over-harvesting.

16. One such modification which would allow an artificial reduction in the estimates based on the MSY concept and lead to a scaled-down fisheries regime is the F_{OPT} term of reference, generally known as $F_{0.1}$. This term of reference is the optimum fishing mortality rate, lower than the maximum mortality rate, F_{MAX}, corresponding to MSY.

17. In our view, at the present time, taking into account the possibilities of data collection and the accessibility and reliability of data, the concept of MSY, modified with the help of the $F_{0.1}$ or $f_{0.1}$ term of reference, should form the basis of methods for the conservation and rational utilization of resources.

18. At the same time, it is known that the level of the optimum intensity of fishing must change in proportion to the size of the stock, variations in which may be conditioned by fluctuations in the number of generations. In this connection, the use of the fixed values of $F_{0.1}$ may result in serious errors in establishing the size of the catch. One way out of this situation, in our view, would be to provide annual estimates of the possible catch, using the optimum intensity of fishing established specifically for each level of stock.

19. Another way of resolving the problem would be to use the term of reference of the acceptable biological catch (ABC), which is established for each year separately mainly on the basis of annual variations in the size of recruitment. The determination of ABC could be based on the size of the parent population that could ensure a maximum level of recruitment. The size of the parent population can be determined, for example, by means of a direct calculation. To increase the size of the population in a situation where there has been over-fishing, it would be advisable to establish ABC at a level known to be lower than MSY. The flexibility of the ABC term of reference would make the management of the "stock-fisheries" system effective with respect to fish populations with a short or medium-length life cycle.

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New York, 14-31 March 1994

LETTER DATED 22 MARCH 1994 FROM THE CHAIRMAN OF THE DELEGATION OF THE RUSSIAN FEDERATION ADDRESSED TO THE CHAIRMAN OF THE CONFERENCE

Further to the discussion at the third session of the Conference, I have the honour to transmit to you, annexed hereto, a paper prepared by the delegation of the Russian Federation entitled "Threat of the destruction of Alaska pollack stocks in the Sea of Okhotsk as a consequence of continued unregulated and unscientific fishing in its enclave".

We should be grateful if you would have this document circulated as a document of the Conference.

(Signed) V. ZILANOV
Chairman of the delegation
of the Russian Federation

Annex

THREAT OF THE DESTRUCTION OF ALASKA POLLACK STOCKS IN THE SEA OF OKHOTSK AS A CONSEQUENCE OF CONTINUED UNREGULATED AND UNSCIENTIFIC FISHING IN ITS ENCLAVE

Submitted by the delegation of the Russian Federation

1. At the second session of the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks (July 1993), the delegation of the Russian Federation drew the attention of participants to the reality of the catastrophic consequences of unregulated and unscientific fishing for Alaska pollack in the enclave of the Sea of Okhotsk (A/CONF.164/L.21). In view of the fact that the fleets of a number of non-coastal States are continuing to engage in such destructive fishing, the delegation of the Russian Federation once again draws the attention of participants in the Conference to this important problem, which calls for urgent practical action. In this connection, we would point out that the Sea of Okhotsk is the only semi-enclosed sea in the world, having an enclave surrounded by the zone of a single State. Fishing in that area, as in the exclusive economic zone, must therefore be carried out in strict compliance with scientific recommendations. It is essential to take into account the biological status of the stocks of Alaska pollack and of associated species. The measures for the conservation of stocks of Alaska pollack are designed to ensure sustainable long-term fishing, are in keeping with the precautionary approach and include the determination of the total allowable catch (TAC), the limitation of fishing areas and seasons, and restrictions according to type of vessel, fishing gear, and so on (A/CONF.164/L.21).

The enclave in the Sea of Okhotsk, which is in the central part of the Sea, comprising 2.7 per cent of its total area, is where the populations of Alaska pollack, which reproduce in the north-west, east and north of the Sea, intermingle, and there has long been a permanent ban on fishing by Russian fishermen in that area.

Strict compliance with the set of measures for the conservation of stocks of Alaska pollack in the Okhotsk Sea, together with the regulation on a scientific basis of fishing by both Russian and foreign fishermen, operating on the basis of intergovernmental agreements, would ensure the maintenance of the status of all the populations of the species at a good level and the sustainable development of fishing.

2. In 1991, however, vessels of countries with no coastlines in the region began unscientific and unregulated fishing for Alaska pollack in the enclave of the Okhotsk Sea and this fishing is still continuing today. These vessels have transferred their operations from the enclave in the Bering Sea, where they were previously engaging in similarly unregulated and unscientific fishing which resulted in damage to the stocks. The fishing which started in the enclave of the Okhotsk Sea has virtually destroyed the balanced system for the conservation of stocks and runs completely counter to the basic need for a precautionary approach to fisheries management.

Those countries which have started to fish in the area have virtually excluded themselves from any preliminary consultations, from negotiations with the coastal States concerning the status of stocks of Alaska pollack in the area, and from the existing measures for the conservation of the stocks.

As a result of unregulated and unscientific fishing for Alaska pollack in the enclave by vessels of countries with no coastline in the region, the TAC determined scientifically for the Sea of Okhotsk as a whole is being exceeded by more than 50 per cent every year. As a result, already in 1993-1994 a sharp decline was noted in the proportion of the older age-group of Alaska pollack in the catch, and this is leading to a sharp decline in the reproductive capacity of the stock.

3. There is a problem of pollution of the marine environment. For instance, a large quantity of discards of undersized fish, oil-polluted water, catch-processing waste, remains of nets and packing cases has been recorded on the drift ice in the enclave. Foreign fishing vessels use the enclave as a base for illegal poaching of fish even in the economic zone of the Russian Federation in the Sea of Okhotsk. This is forcing the Russian authorities to expend additional resources for the protection of its zone.

4. The alarming situation which has developed in that area of the Sea of Okhotsk is giving rise to legitimate indignation among the fishing population of the Russian Far East, whose livelihood depends to a large extent on marine fishing. The problem of the conservation of stocks of Alaska pollack in the light of the unregulated and unscientific fishing for that species is at the centre of attention for the general public, the parliament, the Government and the President of the Russian Federation.

5. In an attempt to prevent the destruction of stocks of Alaska pollack, the Russian Federation has in recent years taken various steps at the international level with a view to achieving positive results. For instance, in 1993 the first and second sessions of an international conference on the conservation and management of marine resources in the open sector of the Sea of Okhotsk and a corresponding meeting of scientists from interested countries on problems relating to the management and conservation of stocks of Alaska pollack in the Sea of Okhotsk were held in Moscow. Unfortunately, it was not possible during those meetings to reach agreements which would prevent the destruction of the stocks of Alaska pollack because of the unconstructive attitude of a number of countries.

6. At the second session of the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks (July 1993), the Russian Federation and the United States of America submitted a joint statement (A/CONF.164/L.33) in which they expressed their concern over the existing state of affairs in the enclave of the Sea of Okhotsk, reaffirmed the need for a moratorium on fishing in the area and expressed the hope that the problem would be resolved as soon as possible.

A number of countries showed good will and associated themselves with the Russian conservation measures, voluntarily stopping fishing for Alaska pollack by their vessels in the enclave of the Sea of Okhotsk. Some countries, however,

are still continuing to engage in unregulated and unscientific fishing, which is destroying the stocks and creating a real threat to the whole ecosystem of the Sea of Okhotsk. Moreover, new fleets of other countries are joining in this fishing.

7. The situation in the enclave of the Sea of Okhotsk is becoming more acute. Russian fishermen are demanding an end to the destructive fishing in the area. The continuation of unregulated and unscientific fishing in the enclave of the Sea of Okhotsk without regard for the stock conservation measures elaborated and approved by the Russian Federation, as a coastal State, and applied on a non-discriminatory basis is creating a real threat to the entire ecosystem of one of the most productive areas of the world's oceans.

In these conditions, the Russian Federation draws the attention of the participants in the Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks, in particular those States whose vessels are continuing to engage in unregulated and unscientific fishing for Alaska pollack in the enclave of the Sea of Okhotsk, to the need for urgent measures to conserve the unique ecosystem of that region. Reaffirming its commitment to the principles of conservation, the development of sustainable fishing, and international cooperation, the Russian Federation resolutely supports the adoption of such urgent measures at the international level, with the participation of all interested States, in order to avoid the need for unilateral protective measures by the Russian side designed to prevent the destruction of the ecosystem of the Sea of Okhotsk.

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PRESENTATION OF THE WORKING PAPER FOR A DRAFT CONVENTION ON THE CONSERVATION AND MANAGEMENT OF STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS ON THE HIGH SEAS

(Submitted by the delegation of Ecuador)

1. Introduction

The present working paper contains the text of a draft Convention on the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks on the High Seas. It is submitted to the Conference by the sponsoring delegation.

This document is based on the negotiating text prepared by the Chairman, and it includes additional concepts presented by several delegations during the July 1993 session, as well as new contributions.

The observations and proposals made during the current session have not been included in the draft because it has been considered appropriate to leave to the Chairman's judgement the evaluation of the changes that, in the light of the debates, he considers advisable to introduce in the revision of his negotiating text.

In presenting this working paper, the sponsoring delegation has had in mind the need to facilitate that task and the proper understanding by the rest of the delegations participating in the Conference of its specific proposals, through a comprehensive text that makes it possible to appreciate the nature and scope of an instrument that, in its opinion, is essential for the establishment of an effective conservation and management regime for the fish stocks concerned.

The purpose of this draft is not to supersede the negotiating text, but solely to provide the Conference with a comprehensive working paper that makes it easier for all participants to evaluate the opinions and the proposals of the

sponsoring delegations with a view to achieving the goals for the establishment of an effective conservation and management regime for such fish stocks on the high seas.

2. Explanation of the sources of the draft

The accompanying version of the text contains:

- In normal characters, the paragraphs transcribed from the negotiating text elaborated by the Chairman of the Conference (A/CONF.164/13, of 29 July 1993, transformed into articles of the Convention). That constitutes the main source of the present working paper;

- In italics, certain articles and paragraphs taken from the draft Convention submitted to the Conference by the delegations of Argentina, Canada, Chile, Iceland and New Zealand (A/CONF.164/L.11/Rev.1, of 28 July 1993);

- Underlined, concepts that stem from other sources, such as the working paper submitted by the delegations of Colombia, Chile, Ecuador and Peru (A/CONF.164/L.14, of 16 July 1993); the document on definitions presented by the delegation of the Russian Federation (A/CONF.164/L.32, of 27 July 1993); and the elements contributed by the Latin American Organization for the Development of Fisheries (OLDEPESCA) in the draft prepared for its Tenth Ministerial Conference, held in Lima, Peru, from 8 to 10 March 1994.

Part XII, on final provisions, which appears in normal characters, reproduces (with the elimination of the paragraphs that referred to "the Area, the International Authority and the common heritage of mankind") the provisions of part XVII of the United Nations Convention on the Law of the Sea.

Annex I (List of highly migratory fish stocks), which appears in italics, has been taken from annex I to the document of the five above-mentioned delegations, which itself reproduces annex I to the United Nations Convention on the Law of the Sea, with the exception of paragraph 17 related to cetaceans.

Annex II (Minimum data requirements for the conservation and management of straddling fish stocks and highly migratory fish stocks), which appears in normal characters, is based on annex 1 to the negotiating text, with the suggested modifications in italics or underlined, as appropriate.

Annex III (Additional precautionary measures), which appears in italics, has been taken from annex II to the draft of the five delegations.

Annex 2 to the negotiating text.

In the table of contents, titles relating to general provisions, final provisions and annexes not reflected in the negotiating text appear underlined or in italics; so do the titles that are taken from the other sources described herein.

Working paper for a

DRAFT CONVENTION ON THE CONSERVATION AND MANAGEMENT OF STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS ON THE HIGH SEAS

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Working paper for a

DRAFT CONVENTION ON THE CONSERVATION AND MANAGEMENT OF STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS ON THE HIGH SEAS

PREAMBLE

The States Parties to this Convention:

Recalling the provisions of Agenda 21, chapter 17, programme C, of the United Nations Conference on Environment and Development, relating to the sustainable yield and conservation of the living resources of the high seas, which recommended the convening of an intergovernmental conference for the purpose of adopting effective measures at the subregional, regional and global levels, to ensure that high-seas fishing of straddling fish stocks and highly migratory fish stocks is managed in accordance with the United Nations Convention on the Law of the Sea;

Recalling also United Nations General Assembly resolution 47/192, by virtue of which a Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks was convened, in accordance with the mandate established at the United Nations Conference on Environment and Development;

Taking into account that the intensification of unlimited fishing of these resources on the high seas is threatening the survival of certain fish stocks and associated species, with not only serious ecological, but also serious social and economic consequences for several coastal communities that have traditionally been dependent upon fisheries;

Mindful of the urgency of establishing an efficient regime for high-seas fishing of straddling fish stocks and highly migratory fish stocks, with a view to ensuring the sustainable development and optimum yield of such stocks, through conservation and management measures that include sharing of information, scientific and technological cooperation, implementation of observation, monitoring, control and enforcement measures, application of penalties in the case of infractions, and recourse to the appropriate procedures for the settlement of disputes;

Mindful also of the need to promote or reinforce, as appropriate, the functioning of regional and subregional fisheries management organizations and agreements for the application and development of the provisions of this Convention in their respective areas of competence, taking into account the particularities of each region and subregion;

Convinced that the only way to achieve these goals is to adopt legally binding rules that determine the rights, obligations and responsibilities of States when applying conservation and management measures established for high-seas fishing of the stocks concerned;

Recognizing in this respect that it is necessary to coordinate the provisions on conservation that apply to the high seas and the exclusive economic zones, given that the straddling fish stocks and highly migratory fish

stocks, during part of their biological cycle, are both inside and outside the zones under national jurisdiction;

Recognizing also that in accordance with the United Nations Convention on the Law of the Sea, in the exclusive economic zones coastal States have sovereign rights to explore, exploit, conserve and manage living resources; and that in the high seas, the freedom of fishing enjoyed by all States is subject, among other things, to the rights, obligations and interests of coastal States;

Have agreed as follows:

PART I

GENERAL PROVISIONS

Article 1

Definitions

1. *For the purposes of this Convention:*

(i) *"Regional fisheries management agreement" means a regional or subregional arrangement or agreement involving two or more States, including the relevant coastal State or States, for the purpose of conserving and managing straddling fish stocks or highly migratory fish stocks on the high seas;*

(ii) "Optimum use of living resources" means a system of exploitation of such resources that reconciles basic dietary, economic and social needs with the maintenance of the exploited stocks at levels which ensure their permanent balance without affecting the preservation of the ecosystem in which they have their habitat;

(iii) *"Fishing vessel" includes any ship, boat or other type of vessel used in or equipped for:*

(a) Fishing, handling, processing or transporting living resources from where they are caught; or

(b) Supplying, servicing, repairing or maintaining vessels of a fishing fleet while at sea;

(iv) "Maximum sustainable yield" means the size of the yield that, according to the best scientific evidence available, represents the highest level of productivity of a certain stock in balanced conditions;

(v) "Allowable catch" means the size of the catch of a certain stock that, taking into account the relevant scientific and socio-economic criteria, is established in accordance with the provisions of this Convention;

(vi) "Catch quota" means the part of allowable catch established in the fishing zones allocated to a State, vessel or individual;

(vii) "Associated species" means species that usually accompany the target species during certain periods of their biological cycle;

(viii) "Dependent species" means species which are related by biological or ecological factors, to the point where the presence of one stock depends on the other stock;

(ix) "State" includes also any regional economic integration organization to which its member States have transferred competence over matters covered by this Convention;

(x) "High seas fishing States" means States that fish straddling fish stocks or highly migratory fish stocks in the high-seas areas adjacent to zones under the jurisdiction of other States;

(xi) "Flag State" means the State whose flag a vessel is entitled to fly;

(xii) "Port State" means the State in whose port or offshore terminal a vessel entitled to fly the flag of another State is present;

(xiii) "State Party" means, as appropriate, a State Party to this Convention or to the regional fisheries management organization or agreement concerned;

(xiv) "Coastal State" means the State where the fishing takes place in high-seas areas adjacent to zones under its jurisdiction;

(xv) "Excessive exploitation" or "over-exploitation" means exploitation whose effect is that the annual increase of a stock is below the level of maximum sustainable catch, or another agreed level for the conservation of that stock, which was intended to ensure that the number of spawners was not reduced to the point where balance and survival of the stock could not be maintained or restored;

(xvi) "Habitat" means the usual zone of distribution of a species, or the area or region in which a certain stock is to be found during most of its biological cycle;

(xvii) "Conservation measures" means the determination and implementation of scientific and technological criteria and methods to ensure the long-term sustainability of the fish stocks concerned, so as to maintain them at levels of permanent balance and maximum productivity. They include the selection and use of the most appropriate reference points to allow reconstitution of the fish stocks, taking into account the situation of the biomass and the ecological and environmental factors that determine it; as well as the collection, supply and evaluation of the relevant scientific, technical and statistical data;

(xviii) "Management measures" means the measures that are aimed at ensuring that the exploitation of the relevant fish stocks is consistent with the goal of achieving optimum utilization of such stocks, taking into account the ecological, economic and social factors involved. They include the regulation of the fishing effort through the establishment of quotas, moratoria and other limitations regarding areas, seasons and fishing gear; the implementation of observation, monitoring, control and enforcement schemes; as well as the application of penalties in the case of infraction;

(xix) "International conservation and management measures" means measures adopted to that effect, in accordance with this Convention, by the relevant fisheries management organization or regional agreement, or if there is none, by the Food and Agriculture Organization of the United Nations (FAO), upon the request of the States concerned;

(xx) "Migration" means the displacement at sea of a certain stock or of part of it, because of factors related to its biological cycle (diet, reproduction, breeding, etc.);

(xxi) "Regional fisheries conservation organization" means:

(a) A regional or subregional organization involving two or more States, including the relevant coastal State or States, whose purpose is to conserve and manage straddling fish stocks or highly migratory fish stocks on the high seas;

(b) A maritime organization formed by two or more States of the same region or subregion, which has powers that include the establishment of conservation and management measures for the fishing of the living resources of that region or subregion.

(xxii) "Fish" means both the fish themselves and the molluscs, crustaceans and chelonians in the regions or subregions where these three sorts of living resources are also straddling species;

(xxiii) "Fishing" means the extraction of any living marine resource belonging to the straddling fish stocks and highly migratory fish stocks;

(xxiv) "Straddling fish stocks" means stocks that, while living most of their biological cycle in the exclusive economic zone of a State, move temporarily to areas of the high seas adjacent to this zone or vice versa; and the fish stocks whose natural habitat comprises both the exclusive economic zone of a State and the adjacent high-seas areas;

(xxv) "Highly migratory fish stocks" means stocks that move along large areas of the high seas and from there possibly to the exclusive economic zone of one or more States, and stocks mainly established in the exclusive economic zone of a State that move from there to large areas of the high seas;

(xxvi) "Zones under national jurisdiction" means the territorial sea and the exclusive economic zone;

(xxvii) "Exclusive economic zone" means the exclusive economic zone as defined in article 55 of the United Nations Convention on the Law of the Sea and, for the purposes of this Convention, includes also the fishing zones within the 200-nautical-mile limit;

(xxviii) "Regulatory area" means an area of the high seas in respect of which a regional fisheries conservation organization adopts conservation and

management measures or to which a regional fisheries conservation arrangement applies.

2. In the cases referred to in subparagraphs (xxiv) and (xxv) of this article, the terms used apply both to a single living resources stock, and to stocks that are dependent of or associated to it.

Article 2

Application

This Convention shall apply exclusively to the fishing of straddling fish stocks on the high seas and highly migratory fish stocks on the high seas, except as regards the collection and supply of information and the coordination of the conservation measures applicable to such stocks on the high seas and in the zones under national jurisdiction.

Article 3

Regulated species

1. Straddling fish stocks regulated by this Convention are those that because of their nature, their usual range of distribution and the distances covered during their biological cycle, are included in the definition in paragraph 1 (xxiv) of article 1.

2. Highly migratory fish stocks regulated by this Convention are those that because of their nature, their usual range of distribution and the distances covered during their biological cycle, are included in the definition in paragraph 1 (xxv) of article 1.

3. Regional and subregional fisheries management organizations and, where there is none, FAO shall establish lists of straddling fish stocks and highly migratory fish stocks that, according to the available scientific information, can be identified as such in the areas under their respective jurisdictions.

4. As an example, a list of highly migratory fish stocks that can be identified as such is included as annex I to the present Convention, subject to what shall be established in accordance with paragraph 3 of this article.

5. The present Convention does not apply to the stocks of greater cetaceans regulated by the International Whaling Commission or any organization that may succeed to it. Except as it refers to the measures established with regard to incidental catches, this Convention shall also not apply to other marine mammals whose conservation and management are regulated by special agreements.

Article 4

Objective

The objective of this Convention is to establish effective measures for the conservation and management of the straddling fish stocks and highly migratory fish stocks on the high seas, with a view to ensuring the sustainable development of such stocks through cooperation among the States concerned and their commitment towards responsible fishing, thus giving effect to the relevant provisions of the United Nations Convention on the Law of the Sea.

PART II

CONSERVATION AND MANAGEMENT

Article 5

Conservation and management measures

In order to achieve the objective of this Convention, States parties shall:

(a) On the basis of the best scientific evidence available, cooperate in the adoption of the conservation measures in the areas of the high seas adjacent to the exclusive economic zone of one or more States, which ensure the long-term sustainability of the straddling fish stocks in those areas; and to cooperate in like manner to establish measures for the conservation and optimum utilization of the highly migratory fish stocks, in both cases as qualified by relevant environmental and economic factors, taking into account the special requirements of developing States, fishing patterns, the interdependence of stocks and any generally recommended international minimum standards, whether subregional, regional or global;

(b) Adopt measures which may include, inter alia, as appropriate:

(i) Total allowable catches and quotas specified by species and fishing areas;

(ii) Limits to fishing effort (e.g. number and fishing capacity of vessels and fishing days);

(iii) Fish size limits or other measures to promote optimum utilization of targeted species;

(iv) Gear restrictions (e.g. minimum mesh sizes);

(v) Area and seasonal closures;

(c) Promote optimum utilization and ensure long-term sustainability of the fish stock(s) concerned;

(d) Take into consideration the effects on ecologically related species with a view to maintaining or restoring populations of associated or dependent fish above levels at which their reproduction may become seriously threatened;

(e) Promote the development and use of environmentally safe and effective fishing techniques in order to minimize pollution, waste, discards and the catching of untargeted species, in particular endangered species, taking into account the need to maintain biodiversity and protect multi-species ecosystems;

(f) Take into account the special requirements of developing States and promote the forms of cooperation and assistance to those States, in conformity with the provisions of Part X of this Convention.

(g) Enhance the level of certainty in management decision-making through the collection and timely sharing of complete and accurate data relating to fishing activities, inter alia, on position, catch, by-catch and fishing effort, as described in annex II, as well as information from national and international research programmes;

(h) Promote scientific research in support of the measures taken in fishery conservation and management, including continuous review of the status of stocks, abundance surveys and biological studies on targeted and non-targeted species, as well as research on oceanographic, climatic and other environmental factors that condition the ecosystems and the movements of these stocks;

(i) Achieve coherent and coordinated conservation and management measures to protect targeted stocks and ecologically related species from over-exploitation by adopting approaches which take into account the interdependence of stock components on the high seas and in areas under national jurisdiction;

(j) Ensure that conservation and management measures do not discriminate in form or fact against the fishermen of any State.

Article 6

Precautionary approach

1. In order to protect the environment and the living marine resources, the precautionary approach shall be applied by States Parties to fisheries exploitation and management, in the following manner:

(a) States shall act so as to obtain and share the best scientific evidence available in support of conservation and management decision-making. States shall take into account, inter alia, uncertainties with respect to the size and productivity of the targeted stock(s), the levels and distributions of fishing mortality, the impact of fishing activities on associated and dependent species and variations in other relevant factors, including climatic, oceanic and other environmental changes;

(b) The absence of adequate scientific information shall not be used as a reason for failing to take strict measures to protect the resource;

(c) Use of the precautionary approach shall include appropriate techniques for the achievement of the established goals, including, where necessary, the application of moratoria;

(d) In cases where the status of stocks is of concern, strict conservation and management measures shall be applied and shall be subject to enhanced monitoring in order to review continuously the status of stock(s) and the efficacy of the measures to facilitate revision of such measures in the light of new scientific evidence;

(e) In the case of new or exploratory fisheries, conservative catch and/or effort limits shall be established as soon as possible and shall remain in force

until there are sufficient data to allow assessment of the impact of the fishery on the long-term sustainability of the stock(s) and associated ecosystems.

2. The regional and subregional fisheries management organizations and, where there is none, FAO, shall be empowered to establish additional precautionary measures such as those described in annex IV, if it is a question of already existing fisheries or newly discovered stocks.

Article 7

Collection and sharing of *information*

1. *States parties shall ensure that fishing vessels entitled to fly their flag provide them in a timely manner with such information on their operations as may be necessary in order to fulfil their obligations under this Convention and shall take appropriate measures to verify the accuracy of such information.*

2. States parties shall cooperate directly or through regional fisheries management organizations or arrangements to:

(i) Collect and exchange the scientific, technical and statistical data available to them with respect to the situation and exploitation of straddling fish stocks and highly migratory fish stocks, both on the high seas and in the zones under their jurisdiction, using to this purpose internationally agreed formats;

(ii) Include in the collection and exchange of data those related to *incidental catches in order to be able to take into consideration the effects of fisheries on the species caught incidentally;*

(iii) Develop and share information, techniques and analytical instruments that make it possible to adopt more appropriate measures for the conservation and management of straddling fish stocks and highly migratory fish stocks, including systems for evaluating such stocks and verifying the data gathered on their status and catches;

(iv) Promote the coordination of international research and data evaluation programmes, including, when feasible, joint scientific research activities or the separate calibration of the operations and the results obtained; and bring about the establishment of a subregional, regional and global database system.

3. States parties shall cooperate in the elaboration of detailed specifications for the application of paragraph 1, taking into account those indicated in annex II to this Convention.

PART III

MECHANISMS FOR INTERNATIONAL COOPERATION

Article 8

Minimal standards for conservation and management

1. Coastal States and States fishing on the high seas shall cooperate, in accordance with the United Nations Convention on the Law of the Sea, in the conservation and management of straddling fish stocks and highly migratory fish stocks on the high seas, directly or through regional fisheries management organizations or arrangements, taking into account the specific characteristics of the region or subregion. Consultations shall be initiated at the request of any interested State.

2. As a minimum, the purpose of such cooperation shall be to agree on conservation and management measures with respect to particular fish stock(s) to ensure their long-term sustainability. Such measures shall also include provisions on data exchange and surveillance, supervision and control to prevent activities that violate agreed conservation and management rules; as well as an effective procedure for the settlement of disputes.

3. States parties shall enter into consultations in good faith and without delay, particularly when there is evidence that the stock(s) concerned may be under threat of over-exploitation. While differences remain, they shall act in good faith to conserve such stocks in a manner which would not constitute an abuse of rights and with due regard to the rights, interests and duties of other States.

Article 9

Cooperation for scientific research

1. States parties and competent international organizations shall cooperate to promote scientific research related to the conservation and management of straddling fish stocks and highly migratory fish stocks for the benefit of all.

2. To this end, they shall establish mechanisms and strategies for bilateral, subregional, regional or global cooperation to carry out the provisions of article 5, paragraph (h), and article 7, paragraphs 2 and 3.

3. In the case of scientific research activities carried out by any State or international organization in areas of the high seas adjacent to zones under the jurisdiction of one or more States, the State or international organization that is carrying out research projects shall inform the relevant coastal State(s) about its objectives, methods and results; and shall facilitate, to the extent possible, the participation of the relevant State(s) in carrying out of such projects.

4. States parties and international organizations shall also promote the strengthening of the autonomous marine scientific research capacity, particularly of developing States, through assistance which shall include, as appropriate, facilities for cooperation for improving their scientific and technological institutions, the use of appropriate methods, the availability of suitable research vessels and equipment, and instruction and training programmes for their technical and scientific staff.

Article 10

Cooperation through regional fisheries management organizations or arrangements

1. Where a regional or subregional fisheries management organization or arrangement has the mandate and competence to establish conservation and management measures for particular straddling fish stock(s) or highly migratory fish stock(s), States parties to this Convention fishing for the stock(s) on the high seas and coastal States with an interest in the stock(s), shall discharge their duty to cooperate by participating in the work of the regional organization or arrangement, in accordance with the mandate and terms of participation of that organization or arrangement.

2. Regional and subregional fisheries management organizations and arrangements shall be open to participation, on a non-discriminatory basis, to all States with an interest in the stock(s) concerned.

3. States with an interest in the stock(s) concerned which are not members of a regional or subregional fisheries management organization shall be encouraged to participate in the work of that organization.

4. Only those States that participate in the work of a regional fisheries management organization or arrangement, or that otherwise cooperate in the application of the conservation and management measures, shall have access to the regulated fisheries.

Article 11

Duty to cooperate where there is no regional fisheries management organization or arrangement

Where there is no subregional or regional fisheries management organization or arrangement to establish conservation and management measures for particular straddling fish stock(s) or highly migratory fish stock(s), States shall enter into agreements or arrangements to ensure effective conservation and management of the stock(s) in question.

Article 12

General criteria for the establishment of mechanisms for cooperation

In establishing regional or subregional fisheries management organizations or arrangements for the conservation and management of straddling fish stocks and highly migratory fish stocks on the high seas, States parties shall determine, inter alia, the following:

(a) The fish stock(s) to which the conservation and management measures shall apply, taking into account the biological characteristics of the stock(s) concerned and the nature of the fisheries involved;

(b) The area that will be covered, taking into account the relevant characteristics of the region, including socio-economic, geographical and environmental factors;

(c) The relationship of the new organization or arrangement to the role, objectives and operations of any existing fisheries organizations or arrangements;

(d) The mechanisms by which the organization or arrangement will obtain scientific advice and review the status of the stock(s) in question including, where appropriate, the establishment of a scientific advisory body;

(e) Mechanisms to ensure effective application of conservation and management measures.

Article 13

Purpose of the regional organizations and arrangements

Coastal States and States fishing on the high seas which participate in a regional or subregional fisheries management organization or arrangement, when fulfilling their obligation to cooperate in the formulation of conservation and management measures to be applied to the straddling fish stocks and highly migratory fish stocks, shall:

(a) Establish, as appropriate, quota allocations or limits on fishing efforts;

(b) Adopt and apply international minimum standards for conducting fishing operations in a responsible manner;

(c) Develop agreed standards for the collection, reporting, verification and exchange of data and information on fisheries for the stock(s) in question;

(d) Compile and disseminate complete and accurate statistical data, as described in annex II, relating to catches of targeted stock(s) and incidental catches and any other relevant information necessary to ensure that the best

scientific evidence is available, (while maintaining confidentiality where appropriate);

(e) Conduct and disseminate the results of scientific analysis of data on stocks(s) and carry out scientific research on relevant factors, including environmental and oceanographic factors;

(f) Establish appropriate cooperation mechanisms for effective monitoring, control, surveillance and enforcement;

(g) Develop and use environmentally safe and cost-effective fishing techniques in order to minimize pollution, waste, discards and the catching of untargeted species, in particular endangered species, taking into account the need to protect biodiversity;

(h) Agree on the means by which the activities of the organization or arrangement will be financed, bearing in mind the relative benefits derived from the fisheries and different capacities of countries, especially developing coastal States, to provide financial and other contributions;

(i) Agree on measures consistent with international law to deter non-parties from undermining the effectiveness of conservation and management measures established by the organization or arrangement;

(j) Agree on means by which the fishing interests of new participants will be accommodated, having regard to the interests of both new and existing participants, their respective contributions to conservation and management of stock(s), the status of stocks and the special requirements of new participants from developing countries of the same region or subregion;

(k) Agree on decision-making processes which facilitate the timely and effective determination of conservation and management measures;

(l) Establish procedures for compulsory settlement of disputes concerning conservation and management measures, consistent with the relevant provisions of the United Nations Convention on the Law of the Sea. Procedures for settlement of disputes shall be applicable to all members of the organization or parties to the arrangement, including non-parties to the Convention;

(m) Consult, cooperate and coordinate, as appropriate, with other relevant fisheries organizations and arrangements;

(n) Establish procedures for reviewing periodically the effectiveness of the organization or arrangement;

(o) Apply, as appropriate, the rest of the measures for conservation and management referred to in article 5 of this Convention.

Article 14

New participants

The participation of new members in a regional fisheries management organization or arrangement shall be subject to the conditions established by that organization or arrangement, taking into account the following:

(i) The status of the stock(s) in question and the existing levels of fishing effort, which may require the establishment of a waiting period, assignment of allocations, *only when the total allowable catch exceeds a threshold, or, when there is no margin for new allocations, relinquishment of part of their quotas by existing participants;*

(ii) Preference in access for coastal States in the vicinity of whose exclusive economic zones straddling fish stocks or highly migratory fish stocks that are both in these zones and in the adjacent areas of the high seas are exploited; and, particularly among those States, for developing countries, especially those that depend economically, socially or culturally on marine resources;

(iii) The contribution to conservation and management of stock(s), to the collection and provision of accurate data and to the conduct of scientific research on stock(s) made by the new participants prior to becoming parties to the organization or the arrangement;

(iv) The historical fishing patterns of the new participants;

(v) The interests of existing participants whose coastal communities are dependent on fishing for the stock(s).

Article 15

Strengthening of the existing mechanisms for cooperation

States parties shall cooperate to strengthen existing regional and subregional fisheries management organizations and arrangements in order to improve their effectiveness in establishing and implementing conservation and management measures for straddling fish stocks and highly migratory fish stocks.

Article 16

Application of existing international agreements

In implementing the provisions of articles 8 to 13, States parties shall carry out, at the regional level, the relevant provisions of the United Nations Convention on the Law of the Sea and other international agreements consistent with the Convention concerning the conservation and management of straddling fish stocks and highly migratory fish stocks.

Article 17

Enclosed and semi-enclosed seas

In establishing a regional fisheries management organization or arrangement in respect of an enclosed or semi-enclosed sea, States parties shall comply with the provisions of article 123 of the United Nations Convention on the Law of the Sea.

Article 18

Transparency

Regional fisheries management organizations shall be transparent. Representatives from other intergovernmental organizations and non-governmental organizations concerned with straddling fish stocks and highly migratory fish stocks shall be afforded the opportunity to participate in meetings of such bodies as observers or otherwise, as appropriate.

Article 19

Obligations of non-member States

1. States that are not members of a regional fisheries management organization or arrangement shall ensure that the vessels entitled to fly their flag do not fish contrary to the terms of the conservation and management regime established by that organization or arrangement. Non-member States shall not issue a licence or permit to its vessels to fish within the regulatory area.

2. Where a State does not participate in the work carried out through subregional or regional fisheries management organization or arrangement, that State shall not be exempt from the obligation to cooperate in the conservation and management of the regulated stocks.

Article 20

Coordination for compliance by non-member States

1. States which are members of or participate in a regional fisheries management organization or arrangement shall exchange information with respect to the activities of fishing vessels flying the flags of non-parties that undermine the effectiveness of conservation and management measures established by the organization or agreement.

2. States shall cooperate in a manner consistent with international law to ensure that fishing vessels entitled to fly the flags of non-member States do not engage in activities that undermine the effectiveness of relevant international conservation and management measures.

PART IV

RESPONSIBILITIES OF THE FLAG STATE

Article 21

General obligation to cooperate

Flag States whose vessels fish in the high seas shall take the necessary measures to ensure that their vessels comply with regional or subregional fisheries conservation and management measures. To this end, they shall cooperate in effective monitoring, control and surveillance of fishing vessels, fishing activities and related activities, either bilaterally or through regional fisheries management organizations or arrangements.

Article 22

Control of the vessels of the flag State

In order to carry out effectively their responsibilities in accordance with the present Convention, States parties shall exercise control over the vessels that fly their flag, by means of legal and administrative provisions, and in conformity with the agreed procedures in regional, subregional or global arrangements that include:

(a) The establishment of a system of licences, authorizations, permits and requirements for fishing in the high seas;

(b) National legislation to prohibit fishing by vessels that operate without a licence, authorization or permit to fish, or that do so without being duly recorded in the corresponding national, regional or global registers;

(c) The requirement that vessels must carry the licence, authorization or permit on board at all times and must produce such licence, authorization or permit on demand by an authorized observer or inspector;

(d) The requirement that information contained in a licence, authorization or permit is sufficient to fulfil any obligations of the flag State established by subregional, regional or global arrangements;

(e) The prohibition for the vessels authorized to fly their flag to undertake, while fishing in the high seas, any activity that undermines the effectiveness of the international conservation and management measures;

(f) The prohibition for those vessels operating in an area of the high seas adjacent to the exclusive economic zone of a State to fish in that zone in a manner that contravenes the laws and regulations of the coastal State.

Article 23

Measures for monitoring, surveillance and control

1. States parties shall adopt effective monitoring, surveillance and control measures to ensure that the vessels authorized to fly their flag comply with the fisheries conservation and management measures established in accordance with this Convention. To this effect, and subject to the particularities of each region, they shall consider among those measures:

(a) Implementation of quotas and other control measures adopted in accordance with subregional or regional arrangements;

(b) Establishment of a national register of fishing vessels incorporating information on vessels entitled to fly their flag and authorized to fish on the high seas;

(c) Compliance with the requirements of regional or global registers by vessels fishing or authorized to fish on the high seas;

(d) Requirements for marking fishing vessels and fishing gear for identification in accordance with uniform and internationally recognizable vessel and gear marking systems such as the Food and Agriculture Organization of the United Nations (FAO) Standard Specifications for the Marking of Fishing Vessels;

(e) Requirements for catch verification and validation through agreed observer programmes, inspection schemes, unloading reports, supervision of transshipment, dockside monitoring and monitoring of landed catches and market statistics;

(f) Implementation of national and regionally agreed inspection schemes, including requirements for vessels flying its flag to permit access by inspectors from other States in the region or subregion. Detailed requirements for inspection schemes must include the requirement for vessel operators to allow any authorized person(s) to board vessels and carry out the duties agreed under the scheme;

(g) Implementation of national and regionally agreed observer programmes, including requirements for vessels flying its flag to permit access by observers from other States in the region or subregion. Detailed requirements for observer programmes must include requirements for vessel operators to allow observers to board vessels and carry out the functions agreed under the programme;

(h) Installation and use of satellite transmitter equipment (vessel monitoring systems) in accordance with national and regionally integrated systems;

(i) The regulation of transshipment on the high seas to ensure that regionally agreed monitoring, control and surveillance measures are not undermined;

(j) Measures to implement, for vessels flying its flag, subregional, regional or global standards for collection of catch, effort and other relevant fisheries data in the agreed format and time-frame;

(k) Requiring compliance with international minimum standards for responsible fishing practices;

(l) Education and information programmes to ensure that their nationals understand the provisions of, and basis for, the conservation and management measures.

2. With respect to the measures referred to in paragraph 1, subparagraphs (f) and (g), the flag State shall reach agreement with the relevant coastal State in order to provide the necessary facilities to the inspectors and observers of that State for the exercise of their functions and reduce to a minimum the expenses involved.

Article 24

Supplementation through regional agreements

The responsibilities of flag States referred to in article 22 should be supplemented by regionally agreed systems of monitoring, control and surveillance, including vessel monitoring systems (VMS). Where there is a regionally agreed system of monitoring, control and surveillance in effect, flag States should ensure that the measures they impose are compatible with that system.

PART V

COMPLIANCE AND ENFORCEMENT OF CONSERVATION AND MANAGEMENT MEASURES

Article 25

Compliance and enforcement by flag States

In order to ensure compliance with the measures, rules and regulations for the fisheries of straddling fish stocks and highly migratory fish stocks agreed on at the subregional, regional or global level, States parties shall:

(a) Adopt legislation and administrative measures to ensure that vessels flying their flags comply with agreed conservation and management measures of the relevant fish stocks;

(b) Provide what is necessary for the effective enforcement of such measures, rules and standards wherever violations occur;

(c) Ensure that vessels flying their flags are prohibited from fishing on the high seas when they have committed a serious breach of agreed conservation and management measures, or other international rules and standards;

(d) Prevent, through all means at their disposal, including the elimination of financial incentives, *the flagging or reflagging of fishing vessels for the purpose of avoiding compliance with international conservation and management measures;*

(e) Investigate immediately any alleged violation of agreed management measures, including the physical inspection of the vessel(s) concerned;

(f) Make every effort to investigate fully and properly alleged violations and report promptly to the aggrieved State and the relevant subregional, regional or international organization on the progress and outcome of the investigation. Investigations may be undertaken directly, in cooperation with other concerned State(s), or through the relevant subregional or regional fisheries management organization or arrangement. Information on the progress and outcome of the investigations should be provided to all interested States;

(g) Require any vessel(s) flying their flags to give information regarding catches, activities and fishing operations in the area of an alleged violation, where there are grounds for believing that the vessel(s) has committed such a violation.

Article 26

International cooperation for the coordination of investigations

1. A flag State conducting an investigation of an alleged violation may request the assistance of any other State whose cooperation may assist in clarifying the circumstances of the case. All States shall endeavour to meet reasonable requests made by the flag State in connection with such assistance.

2. If a flag State is satisfied that there is sufficient evidence to enable proceedings to be brought in respect of the alleged violation, the flag State should, without delay, institute such proceedings in accordance with its laws and, where appropriate, detail the vessel(s) in question.

3. States shall assist each other, based on information to which they have access, in identifying vessels reported to have engaged in activities undermining the effectiveness of international conservation and management measures.

4. States shall establish effective arrangements for obtaining and transmitting evidence they have to prosecuting authorities.

5. Upon request of a port State, States shall provide information to which they have access regarding the violations committed and the reasonable assistance which they are able to provide regarding investigation and enforcement measures.

Article 27

Compliance and enforcement by regional fisheries management organizations or arrangements

A flag State shall cooperate with relevant coastal States and through regional fisheries management organizations or arrangements in the development of regionally agreed procedures for the conduct of fisheries surveillance and law enforcement. Where appropriate, fisheries surveillance shall be conducted in accordance with such regionally agreed procedures. Within regions or subregions, States shall cooperate in the enforcement of their fisheries laws and regulations, including specific agreements for that purpose. To this end, States shall agree, inter alia, on procedures under which the appropriate authorities of one State may board, inspect and, if appropriate, arrest a fishing vessel entitled to fly the flag of another State, including the notification requirements for such action and the procedures under which one State might detain the vessel of another State.

Article 28

Cooperative action against vessels committing violations

States parties within a region or subregion shall be entitled to take cooperative action to prevent vessels which have violated internationally agreed management measures, rules or standards, from fishing in that region or subregion until such time as corrective action is taken by the flag State. Such action may include, inter alia, the temporary removal of the offending vessel from the register of fishing vessels authorized to fish in the region or subregion.

Article 29

Enforcement against unregistered vessels

When an unregistered fishing vessel is sighted operating in a regulated fishery, the appropriate authorities of a State may take such action as is necessary to arrest and, if warranted, prosecute the vessel. The arresting State shall detain the crew for the period necessary to bring the arrested vessel to the nearest port of the State and to complete its investigations. It shall expeditiously carry out all investigations and judicial proceedings. It shall, as soon as practicable, inform the State or States of which the crew are nationals of the action taken.

Article 30

Enforcement against vessels that conceal their identification

When a fishing vessel conceals its identification or indicates a registry to which it does not belong, a State may take such action as is necessary to board, inspect and, if appropriate, arrest the vessel. It shall, as soon as practicable, inform the State or States where the vessel is registered of the action taken. The arresting State may detain the vessel for such reasonable period as is necessary for the flag State to take control of the vessel for enforcement purposes. The arresting State may, with the agreement of the flag State, take other appropriate action.

Article 31

Port State enforcement

1. A port State shall take, in accordance with international law, such measures as are necessary to ensure the effectiveness of international conservation and management measures. To this end, a port State may inspect documents and catch on board fishing vessels in its ports and offshore terminals and may deny access to these facilities. A port State may also carry out such inspections at the request of another State in order to assist such other State in enforcement of its laws.

2. Where such inspection or other evidence discloses clear and reasonable grounds for believing that the vessel has contravened or otherwise undermined international conservation and management measures or has fished on the high seas without an authorization, licence or permit, the port State shall inform the flag State and the requesting State, if any. Regional fisheries management organizations or arrangements should provide port States with authority to detain vessels for such reasonable period as is necessary for the flag State to take control of the vessels for enforcement purposes. If the port State detains a vessel for this purpose it must promptly inform the flag State. The State detaining the vessel may, with the agreement of the flag State, take other appropriate action.

Article 32

Information on disposition of cases

Where, pursuant to articles 26, 28 and 29, the arresting State has delivered the arrested vessel to the flag State, the latter State shall inform the former, within 12 months of such delivery and every six months thereafter, of the action taken in respect of that vessel until final disposition of the matter.

Article 33

Application of sanctions

1. All States shall adopt legislation and administrative measures to ensure that their nationals, including owners, charterers, masters and fishing masters, comply with agreed conservation and management measures and other international rules and standards. Such measures shall consist of *compliance action (such as directions, warnings, injunctions and orders)* and punitive measures *(penalties)*, which, depending on the nature and gravity of the offence, may include *fines proportionate to the value of the fishing vessel* and to the benefits accruing from the illegal activity, *seizure or forfeiture of the catch, fishing equipment or vessel, and the suspension or cancellation of licences* and authorizations to serve as vessel masters or fishing masters on vessels fishing on the high seas.

2. Procedures for prosecuting violators shall be as expeditious as possible. The sanctions applicable must be of sufficient gravity and of a sufficiently deterrent nature to secure compliance with international measures, rules and standards and must deprive offenders of the benefits accruing from their illegal activities.

3. Where the offences committed have resulted in damage or loss to one or more States, the sanctions applied by the flag State shall include compensation for such damage or loss.

PART VI

SPECIAL REQUIREMENTS OF DEVELOPING COUNTRIES

Article 34

Recognition of the special requirements of developing countries

1. In exercising their rights and fulfilling their responsibilities with regard to straddling fish stocks and highly migratory fish stocks on the high seas, States Parties shall give full recognition to the special requirements of developing countries. In this regard, States shall cooperate, at a global, regional, subregional or bilateral level and, as appropriate, through subregional, regional and global organizations, especially FAO, to provide assistance to developing countries.

2. States shall take into account requirements including:

(i) The vulnerability of developing countries, particularly small island developing countries or other countries whose geographical situation or environment makes them dependent upon the exploitation of living marine resources, especially in terms of the impact on subsistence fisheries and the nutritional requirements of their coastal populations;

(ii) The need for effective assistance, including financial, scientific and technological assistance and training, so that developing countries can fulfil their obligations with respect to the conservation and management of straddling fish stocks and highly migratory fish stocks.

Article 35

Forms of cooperation with developing countries

Special forms of cooperation with developing countries for the purposes set out in this Part shall include financial assistance, assistance relating to human resources development, scientific assistance, technical assistance, transfer of technology, including joint venture arrangements, and appropriate advisory and consultative services. Assistance should be directed in the following areas:

(a) Collection, reporting, verification and exchange of fisheries and fisheries-related data and information;

(b) Stock assessment and scientific research;

(c) Application of effective conservation and management methods;

(d) Monitoring, control, surveillance and enforcement, including training and capacity-building at the local level, the development and funding of

national and regional observer programmes and access to technology and equipment;

(e) Access to dispute settlement mechanisms within the framework of regional and subregional agreements;

(f) Greater participation of developing countries in fisheries for straddling fish stocks and highly migratory fish stocks.

Article 36

Special assistance for fisheries development

1. States Parties shall cooperate to enhance the ability of developing countries to conserve, manage and develop their own national fisheries for straddling fish stocks and highly migratory fish stocks on the high seas and in areas under national jurisdiction. Such cooperation shall take the form of special assistance to developing countries, including allowing for favourable access for developing countries to high seas areas adjacent to their exclusive economic zones to enable them to participate in high seas fisheries for straddling fish stocks and highly migratory fish stocks.

2. States and international organizations should assist developing countries in establishing new fisheries organizations or strengthening existing organizations concerned with the conservation and management of straddling fish stocks and highly migratory fish stocks.

Article 37

Cooperation funds

States Parties shall cooperate to establish, through the competent subregional, regional or global organizations, as appropriate, funds to enable developing countries to meet the costs involved in any dispute settlement proceedings to which they may be parties.

PART VII

COMPATIBILITY AND COHERENCE BETWEEN NATIONAL AND INTERNATIONAL CONSERVATION MEASURES FOR THE SAME STOCK

Article 38

Coordination of measures applicable on the high seas and those applicable in areas under national jurisdiction

1. States fishing straddling fish stocks and highly migratory fish stocks in areas of the high seas adjacent to areas under the jurisdiction of coastal States shall cooperate with those States, either directly or through regional

fisheries management organizations or arrangements, in complying with conservation measures aimed at ensuring the long-term sustainability and optimum utilization of such stocks.

2. To this end, States fishing on the high seas and coastal States shall undertake the necessary coordination to ensure that the conservation and management measures applicable on the high seas are coherent and compatible with those established in respect of areas under national jurisdiction for the same stocks, such measures being based on the best scientific evidence available and having an equivalent effect.

3. The coordination referred to in paragraph 2 shall be without prejudice to the sovereign rights of coastal States for the purpose of exploring, exploiting, managing and conserving living marine resources within areas under national jurisdiction, exercised in accordance with the United Nations Convention on the Law of the Sea.

Article 39

Minimum conservation and management standards applicable on the high seas

In determining conservation and management measures for straddling fish stocks and highly migratory fish stocks on the high seas, States Parties, either directly or through subregional or regional organizations or arrangements, shall:

(a) Ensure that the measures do not result in transferring, directly or indirectly, a disproportionate burden of the need for conservation action onto the coastal State(s);

(b) Ensure that the measures do not result in undue harmful impact on the living marine resources within the areas of national jurisdiction;

(c) Ensure that the measures established in respect of the high seas are no less stringent than those adopted by coastal States in areas under their jurisdiction in respect of the same stock(s);

(d) Give due regard, in the interest of all States concerned, to:

(i) The measures taken or proposed by the coastal State(s) within areas under national jurisdiction;

(ii) The relevant dependence of the coastal State(s) and States fishing on the high seas on the stocks concerned;

(iii) The impact of high seas fishing on the stock(s) and on associated and dependent species within areas under national jurisdiction;

(iv) The particularities of the region and the biological characteristics of the stock(s) concerned.

Article 40

Ensuring equivalence of measures in areas under national jurisdiction

Where agreement is reached on conservation and management measures for the high seas that are more stringent than those applied by coastal States in areas under their jurisdiction in respect of the same stock(s), those States shall take all possible steps to ensure that the conservation measures applicable within their respective areas are equivalent in effect to the relevant measures applicable on the high seas.

Article 41

Measures to be applied in the absence of an agreement

If, in spite of the procedures outlined above, the States concerned are unable to agree on conservation and management measures for the high seas, States shall nevertheless continue their efforts to reach agreement and States fishing on the high seas shall observe, provisionally, conservation and management measures equivalent in effect to those applying in respect of the same stock(s) in areas under national jurisdiction and, in the absence of such measures, observe minimum international standards or otherwise act in a manner consistent with the duties imposed on States under the Convention until agreement is reached.

PART VIII

SETTLEMENT OF DISPUTES

Article 42

Prevention and settlement of disputes

1. All States shall cooperate in order to prevent disputes. To this end, they shall, in particular, agree on efficient and expeditious decision-making procedures in regional fisheries management organizations or arrangements and strengthen existing decision-making procedures as necessary.

2. In the event of a dispute concerning the interpretation or application of this Convention, the Parties concerned shall seek a settlement through negotiation, enquiry, mediation, conciliation or other peaceful means of their own choice.

Article 43

Disputes of a technical nature

Where the issue in dispute is of a technical nature, the States concerned shall refer the matter to an ad hoc expert panel, which shall confer with the States to resolve the matter without recourse to formal dispute settlement procedures.

Article 44

Implementation of the United Nations Convention on the Law of the Sea

Where all parties to a dispute are Parties to the United Nations Convention on the Law of the Sea, the procedures for the settlement of disputes under that Convention shall apply.

Article 45

Disputes within regional fisheries management organizations or arrangements

1. States that are participants in regional or subregional fisheries management organizations or arrangements shall strengthen or adapt the procedures for the settlement of disputes established by such organizations or arrangements in order to achieve the timely and effective resolution of fisheries disputes. To this end, they shall adopt and comply with procedures for compulsory recourse to binding settlement, such as the procedure set out in annex IV, for the expeditious resolution of disputes relating to the conservation and management of straddling fish stocks and highly migratory fish stocks, including recourse to scientific or other expert advice or to an ad hoc expert panel, as necessary.

2. Where, within a reasonable period of time to be established by the regional organizations, no settlement has been reached by recourse to the procedures referred to above, or the compulsory procedures entailing binding decisions provided under the United Nations Convention on the Law of the Sea, or under other instruments in force between them, the arbitration procedure described in annex IV to this Convention shall apply.

Article 46

Recourse for non-parties to a dispute-settlement procedure established by a regional fisheries management organization or arrangement

States that are not participants in a regional or subregional fishery management organization or arrangement may invoke or submit voluntarily to the

dispute-settlement procedure established by the organization or arrangement. In this event, they shall be bound by the decision taken in the case. States which are participants in such organizations or arrangements may submit to the above-mentioned procedure when it is invoked by non-participants.

Article 47

Impact on the rights specified in the United Nations Convention on the Law of the Sea

1. The application of the procedures set out in this Part shall not prejudice the rights and duties of States specified in the United Nations Convention on the Law of the Sea, particularly the provisions of Part XV thereof, concerning the settlement of disputes.

2. In no case shall these procedures be applied to disputes concerning the exercise of the sovereign rights of coastal States with regard to the exploration, exploitation, conservation or administration of the living resources within their exclusive economic zones. Such disputes may be submitted only to a conciliation commission, as provided for in annex V of that Convention.

PART IX

STATES NOT PARTIES

Article 48

Invitation to participate

States Parties shall encourage States not parties to this Convention to accede to it and to adopt laws and regulations consistent with its provisions.

Article 49

Duty not to violate conservation and management measures

States not parties shall refrain from fishing regulated stocks in a manner that undermines the effectiveness of the conservation and management measures established under this Convention.

Article 50

Cooperation among States Parties

States Parties shall exchange information with respect to activities of fishing vessels flying the flags of non-Parties that are in violation of the international conservation and management measures established under this

Convention and shall take any necessary action that is consistent with international law to prevent or halt such activities.

PART X

REVIEW OF THE IMPLEMENTATION OF CONSERVATION AND MANAGEMENT MEASURES

Article 51

Periodic review

States Parties, subregional and regional organizations and arrangements concerned with the conservation and management of straddling fish stocks and highly migratory fish stocks shall implement the provisions of this Convention based on their capacities and the needs of the region. They shall report biennially to the Secretary-General of the United Nations, who shall submit a report to the General Assembly on a regular basis, taking into account information provided by FAO on the progress made in the implementation of the Convention and, where necessary, proposing means of strengthening the substance and methods of implementation of the provisions and measures of the Convention in order to address any continuing problems in fisheries for these stocks.

PART XI

FINAL PROVISIONS

Article 52

Signature

This Convention shall be open for signature by States, self-governing associated States and territories and by the international organizations referred to in article 1, paragraph 1 (ix), at United Nations Headquarters in New York. It shall remain open for signature for a period of 24 months from the date of the closing meeting of the Conference which drafted it.

Article 53

Ratification and formal confirmation

This Convention shall be subject to ratification by States, associated self-governing States and self-governing territories and to formal confirmation by international organizations. The instruments of ratification and formal confirmation shall be deposited with the Secretary-General of the United Nations.

Article 54

Accession

This Convention shall remain open for accession by States and the other entities referred to in article 52. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 55

Entry into force

...

2. For each State ratifying or acceding to this Convention after the deposit of the fortieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day following the deposit of its instrument of ratification or accession, subject to paragraph 1.

Article 56

Reservations and exceptions

No reservations or exceptions may be made to this Convention.

Article 57

Declarations and statements

Article 56 does not preclude a State, when signing, ratifying or acceding to this Convention, from making declarations or statements, however phrased or named, with a view, inter alia, to the harmonization of its laws and regulations with the provisions of this Convention, provided that such declarations or statements do not purport to exclude or to modify the legal effect of the provisions of this Convention in their application to that State.

Article 58

Relation to other conventions and international agreements

1. This Convention shall not alter the rights and obligations of States Parties which arise from other agreements compatible with this Convention and which do not affect the enjoyment by other States Parties of their rights or the performance of their obligations under this Convention.

2. Two or more States Parties may conclude agreements modifying or suspending the operation of provisions of this Convention, applicable solely to the relations between them, provided that such agreements do not relate to a

provision derogation from which is incompatible with the effective execution of the object and purpose of this Convention, and provided further that such agreements shall not affect the application of the basic principles embodied herein, and that the provisions of such agreements do not affect the enjoyment by other States Parties of their rights or the performance of their obligations under this Convention.

Article 59

Amendment

1. After the expiry of a period of five years from the date of entry into force of this Convention, a State Party may, by written communication addressed to the Secretary-General of the United Nations, propose specific amendments to this Convention, and request the convening of a conference to consider such proposed amendments. The Secretary-General shall circulate such communication to all States Parties. If, within six months from the date of the circulation of the communication, not less than one half of the States Parties reply favourably to the request, the Secretary-General shall convene the conference.

2. The decision-making procedure applicable at the amendment conference shall be the same as that applicable at the Conference that has elaborated this Convention, unless otherwise decided by the conference. The conference should make every effort to reach agreement on any amendments by way of consensus, and there should be no voting on them until all efforts at consensus have been exhausted.

Article 60

Amendment by simplified procedure

1. A State Party may, by written communication addressed to the Secretary-General of the United Nations, propose an amendment to this Convention to be adopted by the simplified procedure set forth in this article without convening a conference. The Secretary-General shall circulate the communication to all States Parties.

2. If, within a period of six months from the date of the circulation of the communication, a State Party objects to the proposed amendment or to the proposal for its adoption by the simplified procedure, the amendment shall be considered rejected. The Secretary-General shall immediately notify all States Parties accordingly.

3. If, six months from the date of the circulation of the communication, no State Party has objected to the proposed amendment, it shall be considered adopted. The Secretary-General shall notify all States Parties that the proposed amendment has been adopted.

Article 61

Signature, ratification of, accession to and authentic texts of amendments

1. Once adopted, amendments to this Convention shall be open for signature by States Parties for six months from the date of adoption, at United Nations Headquarters in New York, unless otherwise provided in the amendment itself.

2. Articles 53, 54 and 65 apply to all amendments to this Convention.

Article 62

Entry into force of amendments

1. Amendments to this Convention shall enter into force for the States Parties ratifying or acceding to them on the thirtieth day following the deposit of instruments of ratification or accession by two thirds of the States Parties or by 40 States Parties, whichever is greater. Such amendments shall not affect the enjoyment by other States Parties of their rights or the performance of their obligations under this Convention.

2. An amendment may provide that a larger number of ratifications or accessions shall be required for its entry into force than are required by this article.

3. For each State Party ratifying or acceding to an amendment referred to in paragraph 1 after the deposit of the required number of instruments of ratification or accession, the amendment shall enter into force on the thirtieth day following the deposit of its instrument of ratification or accession.

4. A State which becomes a Party to this Convention after the entry into force of an amendment in accordance with paragraph 1 shall, failing an expression of a different intention by that State:

(a) Be considered a Party to this Convention as so amended; and

(b) Be considered a Party to the unamended Convention in relation to any State Party not bound by the amendment.

Article 63

Denunciation

1. A State Party may, by written notification addressed to the Secretary-General of the United Nations, denounce this Convention and may indicate its reasons. Failure to indicate reasons shall not affect the validity of the denunciation. The denunciation shall take effect one year after the date of receipt of the notification, unless the notification specifies a later date.

2. A State shall not be discharged by reason of the denunciation from the financial and contractual obligations which accrued while it was a Party to this Convention, nor shall the denunciation affect any right, obligation or legal situation of that State created through the execution of this Convention prior to its termination for that State.

3. The denunciation shall not in any way affect the duty of any State Party to fulfil any obligation embodied in this Convention to which it would be subject under international law independently of this Convention.

Article 64

Status of Annexes

The Annexes form an integral part of this Convention and, unless expressly provided otherwise, a reference to this Convention or to one of its Parts includes a reference to the Annexes relating thereto.

Article 65

Depositary

1. The Secretary-General of the United Nations shall be the depositary of this Convention and amendments thereto.

2. In addition to his functions as depositary, the Secretary-General shall:

(a) Report to all States Parties and competent international organizations on issues of a general nature that have arisen with respect to this Convention;

(b) Notify States Parties of agreements in accordance with article 58, paragraph 3;

(c) Circulate amendments adopted in accordance with this Convention to States Parties for ratification or accession;

(d) Convene necessary meetings of States Parties in accordance with this Convention.

Article 66

Authentic texts

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall, subject to article 51, be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, being duly authorized thereto, have signed this Convention.

DONE AT NEW YORK, this day of

ANNEX I

LIST OF HIGHLY MIGRATORY FISH STOCKS

1. *Albacore tuna: Thunnus alalunga.*

2. *Bluefin tuna: Thunnus thynnus.*

3. *Bigeye tuna: Thunnus obesus.*

4. *Skipjack tuna: Katsuwonus pelamis.*

5. *Yellowfin tuna: Thunnus albacares.*

6. *Blackfin tuna: Thunnus atlanticus.*

7. *Little tuna: Euthynnus alletteratus; Euthynnus affinis.*

8. *Southern bluefin tuna: Thunnus maccoyii.*

9. *Frigate mackerel: Auxis thazard; Auxis rochei.*

10. *Pomfrets: Family Bramidae.*

11. *Marlins: Tetrapturus angustirostris; Tetrapturus belone; Tetrapturus pfluegeri; Tetrapturus albidus; Tetrapturus audax; Tetrapturus georgei; Makaira mazara; Makaira indica; Makaira nigricans.*

12. *Sail-fishes: Istiophorus platypterus; Istiophorus albicans.*

13. *Swordfish: Xiphias gladius.*

14. *Sauries: Scomberesox saurus; Cololabis saira; Cololabis adocetus; Scomberesox saurus scombroides.*

15. *Dolphin: Coryphaena hippurus; Coryphaena equiselis.*

16. *Oceanic sharks: Hexanchus griseus; Cetorhinus maximus; Family Alopiidae; Rhincodon typus; Family Carcharhinidae; Family Sphyrnidae; Family Isuridae.*

ANNEX II

MINIMUM DATA REQUIREMENTS FOR THE CONSERVATION AND MANAGEMENT OF STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS

A. Specification of the data

With a view to ensuring an exact and timely evaluation of the situation of straddling fish stocks and highly migratory fish stocks, both in the high seas and in the zones under national jurisdiction, so that the most appropriate conservation and management measures can be adopted, States parties shall cooperate in the collection, processing and dissemination of the following data:

1. Scientific data

(i) Delimitation of the range of distribution of straddling fish stocks and highly migratory fish stocks;

(ii) Structure, migration and interaction of these stocks, their abundance and reproduction rates and other relevant data related to their biological cycles;

(iii) Length, weight and sex composition of the catch, where agreed;

(iv) Biological parameters supporting stock assessments and other relevant research on abundance, biology, biometry, ecology, fisheries and stock dynamics, including surveys of biomass, hydro-acoustic surveys, research on the functioning of ecosystems and on other oceanographic and environmental factors that affect abundance, spawning and stock reproduction, and on the bioeconomic interactions of fisheries.

2. Technical data

(i) Identification, flag and port of registry of the fishing vessels authorized to fish straddling fish stocks and highly migratory fish stocks;

(ii) Fishing vessel type and specifications (e.g. material of construction, date built, registered length, gross registered tonnage, power of main engine(s), hold capacity, catch storage methods, number of crew);

(iii) Fishing gear description (e.g. type, amount and gear specifications);

(iv) Systems of navigation and position-fixing aids and of aids for the surveillance of fisheries (e.g. by means of boosters connected by satellite to databases on land or other communication devices);

(v) Range and location of fishing operations and other potentially relevant data on the dynamics and seasonal and spatial strategies of fishing fleets.

3. Statistical data

(i) Time series of historical catch and effort statistics by fleet from the start of the fishery;

(ii) Total catch in number and/or nominal weight, according to models defined by FAO as conversion factors (such as landings + losses due to dressing, handling and processing - gains prior to landings); and broken down by area, by fishing method, by species of targeted, non-targeted and discarded species, including non-fish species as is appropriate to each fishery;

(iii) Fishing location, date and time fished, and other statistics on fishing methods as appropriate;

(iv) Other potentially useful statistical data on fishing effort and transshipments, landings and commercialization.

B. Presentation of data

States that fish in the high seas straddling fish stocks and highly migratory fish stocks shall ensure that fishing vessels authorized to fly their flag send to their own authorities - and, when fishing in areas adjacent to the exclusive economic zones of another State, to the competent authorities of the latter - as well as to the regional fisheries management organizations or arrangements:

(i) Catch and effort log books, including relevant data on fishing operations;

(ii) Catch and effort reports by radio, telex, facsimile and/or satellite transmission;

(iii) Exclusive economic zone possible entry and exit reports.

C. Data verification

States parties shall cooperate directly and through regional fisheries management organizations or arrangements in verifying the position point by means of satellite transmission devices, and in checking the effort, catch composition and amount and other details of fishing operations, through scientific observation programmes and trip, transshipment, landings and port sampling reports if necessary.

D. Assistance to developing countries

In accordance with the provisions of Part VI of this Convention, financial, scientific, technical and capacity-building assistance shall be provided to developing State Parties for the purpose of enhancing their capabilities with respect to data collection, evaluation and exchange, participation in research programmes and access to appropriate technology.

ANNEX III

ADDITIONAL PRECAUTIONARY MEASURES

A. *Newly discovered stocks*

1. (a) At the outset of the development of a fishery directed at a newly discovered stock, to provide for effective scientific review and assessment, and to avoid delays in establishing effective control, the coastal States in whose exclusive economic zones the stock occurs may assume management authority for an initial interim period. These coastal States shall, immediately following the assumption of this authority, convene a meeting of all interested States that have fished in the region without undermining the effectiveness of international conservation and management measures, to consult on the interim catch and effort levels for the fishery to be conducted during the interim period, and to consult on the States that will participate in the fishery under the authority of these coastal States, appropriate interim management and conservation measures, and the fisheries research to be undertaken.

(b) When the initial interim period has terminated, the management of the fishery will become subject to the authority of the relevant regional fisheries conservation organization or arrangement or, where no appropriate organization or arrangement exists, shall be the subject of consultation between the above-mentioned coastal States and other States interested in participating in the fishery.

2. Early large-scale fisheries on newly discovered stocks shall be prohibited.

3. Effort limitations shall be applied immediately to the new fishery.

4. Limitations shall be established on government assistance and licensing to avoid sudden large-scale development of the fishery.

5. Following the initial interim period of the fishery:

(a) Measures shall be established to provide for gradual development of the new fishery;

(b) Precautionary total allowable catches (TACs) and quotas shall be established as scientific information is developed; the TACs shall be established below the levels estimated to be the maximum sustainable yield (MSY) or in accordance with management procedures which lead towards biomass levels which can produce the maximum sustainable yield;

(c) Precautionary management thresholds shall be established, at which previously determined management action will be taken automatically to avoid delays in decision-making;

(d) Bycatch limits shall be established to prevent the overfishing of limits set for stocks subject to TACs and to maintain or restore stocks of

associated or dependent species above levels at which their reproduction may become seriously threatened.

B. Existing fisheries

1. In fisheries for which scientific information is available for the setting of TACs, the TACs shall be established below the level of MSY or, if the population is below that required for traditional levels which can produce the MSY, the TAC shall be established at a level that allows the stock to rebuild.

2. Effort limitations shall be established to restrain catches within TAC and quota limits or, in the absence of such limits, as independent management measures.

3. Precautionary management thresholds shall be established at which previously determined management action will be taken automatically to avoid delays in decision-making.

4. Threshold TACs shall be established below which moratoria shall be automatically applied.

5. In cases where catch levels, catch rates or fish sizes decline over time, TACs and effort shall be reduced to levels aimed at arresting the decline, and any subsidies for fishing operations shall be stopped.

6. Bycatch limits shall be established to prevent the overfishing of limits set for stocks subject to TACs and to maintain or restore stocks of associated or dependent species above levels at which their reproduction may become seriously threatened.

7. In fisheries where catches are not limited by either TAC or effort limitations, controls shall be established on government assistance and licensing to avoid sudden large-scale development of the fishery.

8. For straddling stocks, in cases where the coastal State determines that an emergency exists, the emergency measures prescribed by the coastal State shall apply for a reasonable period, during which the coastal State and the other interested States shall consult, directly or through the relevant international organizations or arrangements, on the measures to be applied following the prescribed period.

9. For highly migratory stocks, in cases where a majority of the coastal States through whose waters the stocks migrate determine that an emergency exists, the emergency measures prescribed by the majority of the coastal States shall apply for a reasonable period, during which the coastal States and other interested States shall consult, directly or through the relevant international organizations or arrangements, on the measures to be applied following the prescribed period.

ANNEX IV

ARBITRATION

A. Institution of proceedings

1. Any party to a dispute may submit the dispute to arbitration by written notification addressed to the Secretary-General of the United Nations, who shall notify the other party or parties to the dispute and constitute an arbitral tribunal as set out herein. The notification shall be accompanied by a statement of the claim and the grounds on which it is based.

B. Constitution of arbitral tribunal

2. The arbitral tribunal shall, unless the parties to the dispute agree otherwise, be constituted as follows:

(i) The arbitral tribunal shall consist of three members, subject to subparagraph (vi) below;

(ii) The party instituting the proceedings shall appoint one member, who may be its national. The appointment shall be included in the notification referred to in paragraph 1 above;

(iii) The other party to the dispute shall, within 10 days of receipt of the notification, appoint one member, who may be its national. If the appointment is not made within this period, the appointment shall be made by the Secretary-General within a further 10 days;

(iv) The two members thus appointed shall select, by mutual agreement, the third member, who shall be the chairman. Failing agreement, the Secretary-General shall make the appointment in 10 days. The chairman shall be a national of a third State;

(v) Any vacancy shall be filled in the manner described for the initial appointment;

(vi) Parties to the dispute with the same interest shall appoint one member of the tribunal jointly and by agreement. Where there are several parties to the dispute having separate interests, or where there is disagreement on whether they have the same interest, the Secretary-General shall appoint one member of the tribunal after consultation with the parties.

C. Submission of memoranda

3. Within 10 days of the formation of the tribunal, the parties concerned shall file a memorandum with the tribunal, copies of which shall be transmitted to all parties.

D. Hearings

4. A hearing shall be convened at a place and on a date to be determined by the tribunal within 30 days following its formation.

E. Procedure

5. Unless the parties to the dispute agree otherwise, the arbitral tribunal shall determine its own procedures, assuring to each party full opportunity to be heard and to present its case.

F. Duties of parties to a dispute

6. The parties to the dispute shall facilitate the work of the arbitral tribunal.

G. Expenses

7. Unless the arbitral tribunal decides otherwise because of the particular circumstances of the case, the expenses of the tribunal, including the remuneration of its members, shall be borne by the parties to the dispute in equal shares.

H. Required majority for decision

8. Any decision of the arbitral tribunal shall be taken by a majority of its members.

I. Default of appearance

9. If one of the parties to a dispute does not appear before the arbitral tribunal or fails to defend its case, the other party may request the tribunal to continue the proceedings and make its award. Absence of a party or failure of a party to defend its case shall not constitute a bar to the proceedings.

J. Verification of the competence and grounds of the claim

10. Before making its award, the arbitral tribunal must satisfy itself, not only that it has jurisdiction over the dispute, but also that the claim is well founded in fact and in law.

K. Provisional measures

11. The tribunal may prescribe provisional measures which it considers appropriate under the circumstances to preserve the respective rights of the parties or to prevent damage to the stock(s) in question, pending the final decision.

L. Award

12. The award of the arbitral tribunal shall be confined to the subject-matter of the dispute and state the reasons on which it is based. The tribunal shall

communicate its decision to all parties within 30 days of the end of the hearing. Reasons in writing shall be communicated to the parties within 60 days of the decision.

M. Finality of award

13. The award shall be final and without appeal. It shall be complied with by the parties to the dispute.

N. Interpretation or implementation of the award

14. Any controversy which may arise between the parties to the dispute as regards the interpretation or manner of implementation of the award may be submitted by either party for decision to the arbitral tribunal which made the award.

O. Application to entities

15. The provisions of the present annex shall apply, mutatis mutandis, to any dispute involving any entities to the dispute.

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UNITED NATIONS CONFERENCE ON
STRADDLING FISH STOCKS AND
HIGHLY MIGRATORY FISH STOCKS
New York, 14-31 March 1994

LETTER DATED 28 MARCH 1994 FROM THE CHAIRMAN OF THE DELEGATION OF THE RUSSIAN FEDERATION ADDRESSED TO THE CHAIRMAN OF THE CONFERENCE

I have the honour to transmit to you, annexed to this letter, a draft resolution of the Conference relating to fishing in areas fully surrounded by the exclusive economic zones of one or more States.

The draft resolution is submitted by the delegation of the Russian Federation for consideration and adoption by the Conference.

I should be grateful if you would have this draft resolution circulated as a document of the Conference.

(Signed) V. K. ZILANOV
Chairman of the delegation
of the Russian Federation

Annex

DRAFT RESOLUTION OF THE UNITED NATIONS CONFERENCE ON STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS RELATING TO FISHING IN AREAS FULLY SURROUNDED BY THE EXCLUSIVE ECONOMIC ZONES OF ONE OR MORE STATES

The United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks,

Bearing in mind the importance of the long-term conservation of straddling fish stocks and highly migratory fish stocks on the high seas,

Considering that the entry into force on 16 November 1994 of the United Nations Convention on the Law of the Sea will be of great significance for the broader application of measures for the conservation and management of these stocks,

Recognizing at the same time the need to make additional efforts in order to raise the level of cooperation among States aimed at achieving sustainable fishing and preventing excessive exploitation of these stocks,

Noting the serious concern expressed by the delegations of many States over the abuses in respect of fishing for the above-mentioned stocks, which have assumed considerable proportions,

Realizing that this concern becomes especially acute in cases when excessive unregulated fishing takes place in areas of the high seas adjacent to the exclusive economic zone of a coastal State, and particularly when such fishing is conducted with increased intensity in relatively small areas which are fully surrounded by the exclusive economic zones of one or more States, and which form enclaves,

Considering that such fishing may cause serious or irreparable harm to the coastal State or States, as the case may be, and present a real threat to the subsistence of the coastal communities,

Guided by resolution 47/192, of the United Nations General Assembly of 22 December 1992, pursuant to which this Conference should identify and assess existing problems related to the conservation and management of straddling fish stocks and highly migratory fish stocks,

1. Calls upon States fishing in the enclaves to abide by the precautionary principle, taking into account the interests of the coastal State, making their fishing there subject to international management and regulatory measures to ensure environmentally sound utilization of fish stocks, and refraining from fishing contrary to, or in the absence of, such international measures;

2. Considers it important that, in the absence of such measures, the States concerned should make the necessary efforts to establish them as expeditiously as possible, and to agree on mutually acceptable arrangements;

3. Reaffirms the right of the coastal State, prior to agreement on such arrangements, to take interim protection measures designed to afford due and necessary protection to the relevant fish stocks, bearing in mind that such measures should not be discriminatory, either in form or in substance, and should apply equally to nationals of the coastal States and nationals of States fishing in the enclaves, and that the lack of full scientific certainty may not constitute a reason for the postponement of such measures.